INVESTIGATIVE SUMMARY

INTERNAL AFFAIRS BUREAU

INVESTIGATIVE SUMMARY

IV 2365542

SUBJECTS:

OSCAR CALDERON
DETECTIVE, #[redacted]

[redacted]
DETECTIVE, #[redacted]

[redacted]
DETECTIVE, #[redacted]

[redacted]
DETECTIVE, #[redacted]

GERARDO LUCIO
SERGEANT, #[redacted]

[redacted]
LIEUTENANT, #[redacted]

[redacted]
LIEUTENANT, #[redacted]

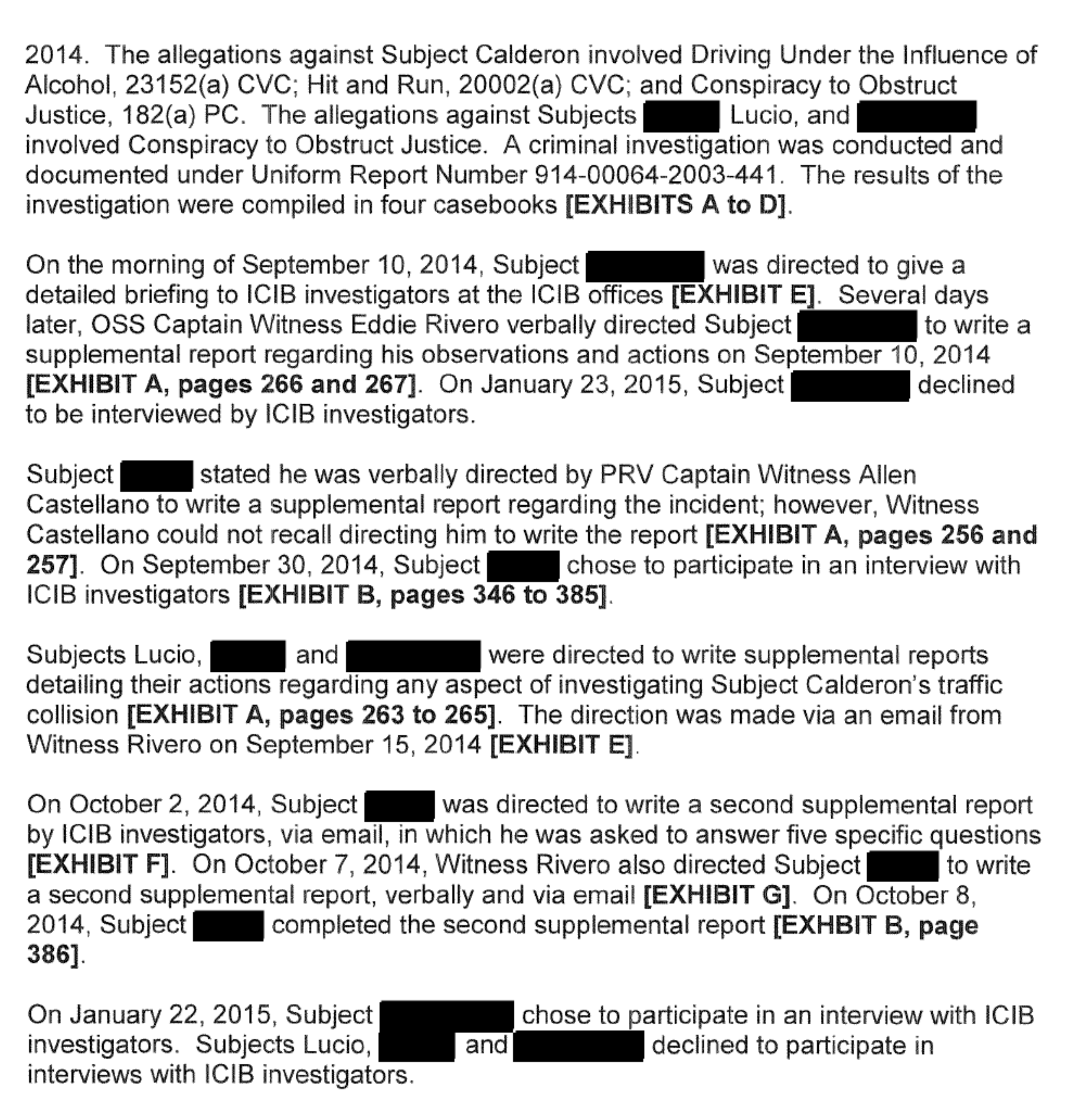
DATES OF INCIDENT: **SEPTEMBER 9 AND 10, 2014**

ALLEGATIONS:

Subject Detective Oscar Calderon was assigned to Operation Safe Streets (OSS) Bureau at Pico Rivera Sheriff Station (PRV). It was alleged that on September 10, 2014, at approximately 0043 hours, Subject Calderon was involved in an alcohol related traffic collision in the city of Pico Rivera while driving a Department vehicle, then fled the scene (hit and run).

It was further alleged Subjects Lieutenant [redacted] Lieutenant [redacted], Sergeant Gerardo Lucio; and Detectives [redacted] and [redacted] conspired to cover up, and/or delay the investigation process, and failed to preform to standards during the incident. Subject Detective [redacted] was alleged to have falsified information on his Weekly Time Card.

An Internal Criminal Investigations Bureau (ICIB) investigation regarding the alleged misconduct by Subjects Calderon, [redacted] Lucio, and [redacted] was conducted at the direction of Executive Officer Neal Tyler, starting on the morning of September 10,



2014. The allegations against Subject Calderon involved Driving Under the Influence of Alcohol, 23152(a) CVC; Hit and Run, 20002(a) CVC; and Conspiracy to Obstruct Justice, 182(a) PC. The allegations against Subjects [redacted] Lucio, and [redacted] involved Conspiracy to Obstruct Justice. A criminal investigation was conducted and documented under Uniform Report Number 914-00064-2003-441. The results of the investigation were compiled in four casebooks **[EXHIBITS A to D]**.

On the morning of September 10, 2014, Subject [redacted] was directed to give a detailed briefing to ICIB investigators at the ICIB offices **[EXHIBIT E]**. Several days later, OSS Captain Witness Eddie Rivero verbally directed Subject [redacted] to write a supplemental report regarding his observations and actions on September 10, 2014 **[EXHIBIT A, pages 266 and 267]**. On January 23, 2015, Subject [redacted] declined to be interviewed by ICIB investigators.

Subject [redacted] stated he was verbally directed by PRV Captain Witness Allen Castellano to write a supplemental report regarding the incident; however, Witness Castellano could not recall directing him to write the report **[EXHIBIT A, pages 256 and 257]**. On September 30, 2014, Subject [redacted] chose to participate in an interview with ICIB investigators **[EXHIBIT B, pages 346 to 385]**.

Subjects Lucio, [redacted] and [redacted] were directed to write supplemental reports detailing their actions regarding any aspect of investigating Subject Calderon's traffic collision **[EXHIBIT A, pages 263 to 265]**. The direction was made via an email from Witness Rivero on September 15, 2014 **[EXHIBIT E]**.

On October 2, 2014, Subject [redacted] was directed to write a second supplemental report by ICIB investigators, via email, in which he was asked to answer five specific questions **[EXHIBIT F]**. On October 7, 2014, Witness Rivero also directed Subject [redacted] to write a second supplemental report, verbally and via email **[EXHIBIT G]**. On October 8, 2014, Subject [redacted] completed the second supplemental report **[EXHBIT B, page 386]**.

On January 22, 2015, Subject [redacted] chose to participate in an interview with ICIB investigators. Subjects Lucio, [redacted] and [redacted] declined to participate in interviews with ICIB investigators.

On June 8, 2015, the facts of the ICIB case were presented to the Los Angeles County District Attorney's Office, Justice System Integrity Division, for filing consideration. On September 8, 2015, misdemeanor charges of Driving Under the Influence of Alcohol, 23152(a) CVC; and Hit and Run, 20002 (a) CVC were filed against Subject Calderon **[EXHIBIT H]**.

On March 24, 2017, Subject Calderon was convicted, by jury, of one misdemeanor count of Driving Under the Influence of Alcohol, 23152(a) CVC; and one misdemeanor count of Hit and Run, 20002(a) CVC. On July 7, 2017, Subject Calderon's sentence

was suspended and he was placed on 36 months of Summary Probation **[EXHIBIT I]**. Internal Affairs Bureau (IAB) investigators acquired transcripts of the jury trial testimony **[EXHIBIT J]**.

On August 24, 2017, the District Attorney's Office declined to file any charges against Subjects [redacted] Lucio, and [redacted] citing a lack of sufficient evidence **[EXHIBIT A, pages 75G to 75K]**.

SYNOPSIS:

Subjects Calderon, [redacted] and [redacted] were all assigned to PRV OSS. Subject Lucio was their sergeant, and Subject [redacted] was the OSS area lieutenant, with PRV as one of his stations of responsibility. Subject Lieutenant [redacted] was one of the watch commanders assigned to PRV.

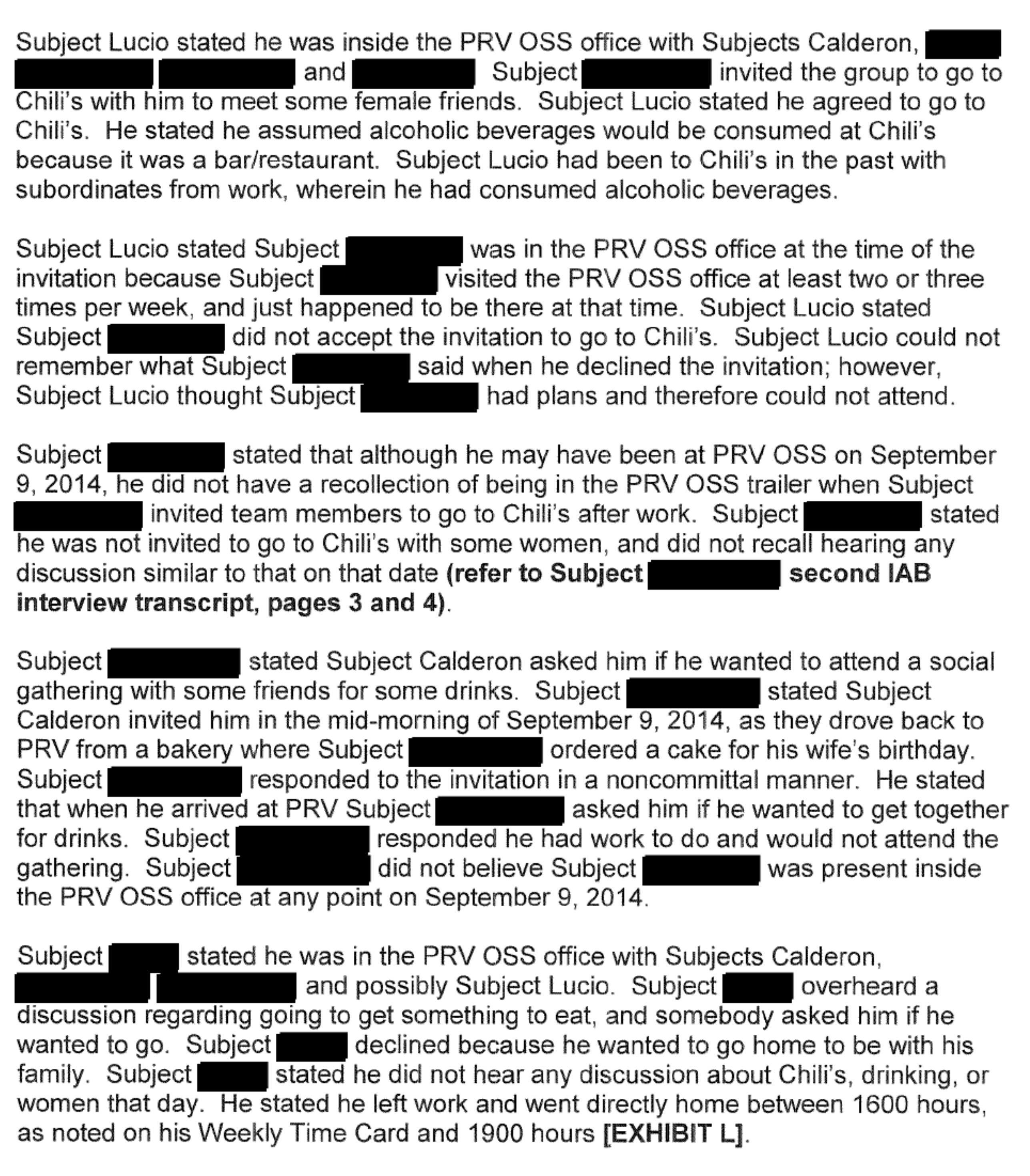
In the afternoon of September 9, 2014, during his work shift, Subject [redacted] contacted his friend, Witness [redacted]. He had known Witness [redacted] for one or two years, and had met her on-duty at a [redacted], where she was a [redacted] Subject [redacted] asked Witness [redacted] if she wanted to meet with him at Chili's Restaurant (Chili's) after work that night. Witness [redacted] responded she did want to meet with him, and that two of her female friends, Witnesses [redacted] and [redacted], also wanted to go. Subject [redacted] told Witness [redacted] he would ask a couple of his partners at work if they wanted to go with them to Chili's as well, and he would meet her there between 2100 and 2200 hours.

IAB Note: The Chili's is 0.9 miles driving distance from PRV. It is located at 8890 Washington Boulevard, Pico Rivera [EXHIBIT K].

Later that afternoon, Subject [redacted] verbally invited Subjects Calderon, [redacted] and Lucio to go with him to Chili's after work. Subject [redacted] could not recall if he invited the aforementioned subjects individually or if he addressed them as a group. In his invitation, Subject [redacted] made it clear they would be meeting women at Chili's for a couple of drinks. Subjects Calderon and Lucio responded they would accompany Subject [redacted] but Subject [redacted] declined. Subject [redacted] stated he did not invite Subject [redacted]

Subject Calderon stated Subject [redacted] invited him, along with Subjects [redacted] and Lucio, as they all were inside the PRV OSS office. Subject Calderon stated Subject [redacted] invitation was to have dinner at Chili's, but that Subject [redacted] did not initially mention there would be women or drinking at the location.

IAB Note: The PRV OSS office is located inside a trailer in the rear parking lot of PRV.



Subject Lucio stated he was inside the PRV OSS office with Subjects Calderon, [redacted] [redacted] [redacted] and [redacted] Subject [redacted] invited the group to go to Chili's with him to meet some female friends. Subject Lucio stated he agreed to go to Chili's. He stated he assumed alcoholic beverages would be consumed at Chili's because it was a bar/restaurant. Subject Lucio had been to Chili's in the past with subordinates from work, wherein he had consumed alcoholic beverages.

Subject Lucio stated Subject [redacted] was in the PRV OSS office at the time of the invitation because Subject [redacted] visited the PRV OSS office at least two or three times per week, and just happened to be there at that time. Subject Lucio stated Subject [redacted] did not accept the invitation to go to Chili's. Subject Lucio could not remember what Subject [redacted] said when he declined the invitation; however, Subject Lucio thought Subject [redacted] had plans and therefore could not attend.

Subject [redacted] stated that although he may have been at PRV OSS on September 9, 2014, he did not have a recollection of being in the PRV OSS trailer when Subject [redacted] invited team members to go to Chili's after work. Subject [redacted] stated he was not invited to go to Chili's with some women, and did not recall hearing any discussion similar to that on that date **(refer to Subject [redacted] second IAB interview transcript, pages 3 and 4)**.

Subject [redacted] stated Subject Calderon asked him if he wanted to attend a social gathering with some friends for some drinks. Subject [redacted] stated Subject Calderon invited him in the mid-morning of September 9, 2014, as they drove back to PRV from a bakery where Subject [redacted] ordered a cake for his wife's birthday. Subject [redacted] responded to the invitation in a noncommittal manner. He stated that when he arrived at PRV Subject [redacted] asked him if he wanted to get together for drinks. Subject [redacted] responded he had work to do and would not attend the gathering. Subject [redacted] did not believe Subject [redacted] was present inside the PRV OSS office at any point on September 9, 2014.

Subject [redacted] stated he was in the PRV OSS office with Subjects Calderon, [redacted] [redacted] and possibly Subject Lucio. Subject [redacted] overheard a discussion regarding going to get something to eat, and somebody asked him if he wanted to go. Subject [redacted] declined because he wanted to go home to be with his family. Subject [redacted] stated he did not hear any discussion about Chili's, drinking, or women that day. He stated he left work and went directly home between 1600 hours, as noted on his Weekly Time Card and 1900 hours **[EXHIBIT L]**.

Witness Cuauhtemoc "Memo" Gonzalez was a PRV patrol deputy, but had been on loan to PRV OSS from April to July of 2014. He stated he was invited by an unknown person, via email, text, or phone call to go to Chili's on September 9, 2014, to "hang out" **(refer to Witness Gonzalez' IAB interview transcript, page 28)**. Witness Gonzalez could not attend because he was working PM shift at PRV that night and was not scheduled to get off work until 0100 hours on September 10, 2014.

Witness [redacted] was a probation officer assigned to PRV. She worked closely with the PRV OSS team. She could not remember any details of what happened on September 9, 2014; however, she stated she was not invited to attend any social function with the PRV OSS team on that date.

Subject [redacted] stated the entire PRV OSS team started work very early on September 9, 2014, for a 0500 hour warrant service **(refer to Subject [redacted]'s ICIB interview transcript, page 5; his jury trial testimony, page 652, and his first IAB interview transcript pages 26, 30, and 31)**. Subject [redacted] stated Subjects Calderon, [redacted] and Lucio changed out of their work attire at approximately 1100 hours and left PRV before noon, and Subject [redacted] had left work before them on September 9, 2014.

> **IAB Note: The work times Subject [redacted] stated the PRV OSS team worked on September 9, 2014, did not match the reported times for anyone on the PRV OSS Weekly Time Card. There was no evidence of the team having conducted a warrant service on that date. The Weekly Time Card showed Subject [redacted]'s work hours for September 9, 2014, were 0830 to 1200 hours for 3.5 hours of on-call court overtime, and then [redacted] hours of regular time [EXHIBIT L].**

In his second IAB interview, Subject [redacted] stated he misspoke in his previous interviews and jury trial testimony. He stated the PRV OSS team actually did not help serve any warrants on September 9, 2014, and his actual work hours were accurately reflected on the Weekly Time Card **(refer to Subject [redacted]'s second IAB interview transcript, pages 3, 7, 11, 36, 37)**. Subject [redacted] stated he was at PRV on September 9, 2014, between 0830 hours and 1200 hours because he was "working out and doing other things," but he was not doing any work, and that is why he submitted for the on-call court overtime for that time period **(refer to Subject [redacted]'s second IAB interview transcript, pages 37 and 38)**.

> **IAB Note: IAB investigators retrieved records from the Case Level Evaluation Assignment and Tracking System (CLEATS), which is a database used by detectives to track their cases. Records indicated Subject [redacted] created entries for September 9, 2014, at various times between 1630 hours and 2030 hours. Subject [redacted] created entries on that date between 0900 hours and 1754 hours [EXHIBIT M].**

> **IAB Note: IAB investigators retrieved records from the Justice Data Interface Controller (JDIC) system, which indicated Subject [redacted] conducted searches in that system on September 9, 2014, between 1448 hours and 1847 hours [EXHIBIT N].**

Subject Lucio stated he ended his workday on September 9, 2014, at 2000 hours and drove to Chili's shortly thereafter. He drove by himself in his personal vehicle, which was a black, four door Volvo sedan. Subject Lucio had no plan regarding how much alcohol he would drink at Chili's. He stated he arrived at Chili's approximately between 2000 and 2030 hours. Subject Lucio entered Chili's and walked to the bar area. He saw three women sitting at a table, one of whom he recognized (Witness [redacted]) as being Subject [redacted] friend. Subject Lucio had met her in the past at [redacted], when he had eaten lunch with Subject [redacted] Subject Lucio sat down at the table with the women. He noticed the women already had alcoholic beverages on the table.

Subject Lucio ordered and drank a Bud Light beer, while awaiting the arrival of Subjects Calderon and [redacted] Approximately 15 to 30 minutes after his arrival at Chili's, Subject Lucio looked out a window and saw Subjects Calderon and [redacted] walking into a Walgreen's pharmacy, which was right next door to Chili's. A few minutes later, Subjects Calderon and [redacted] entered the Chili's and sat at the table with Subject Lucio and the women.

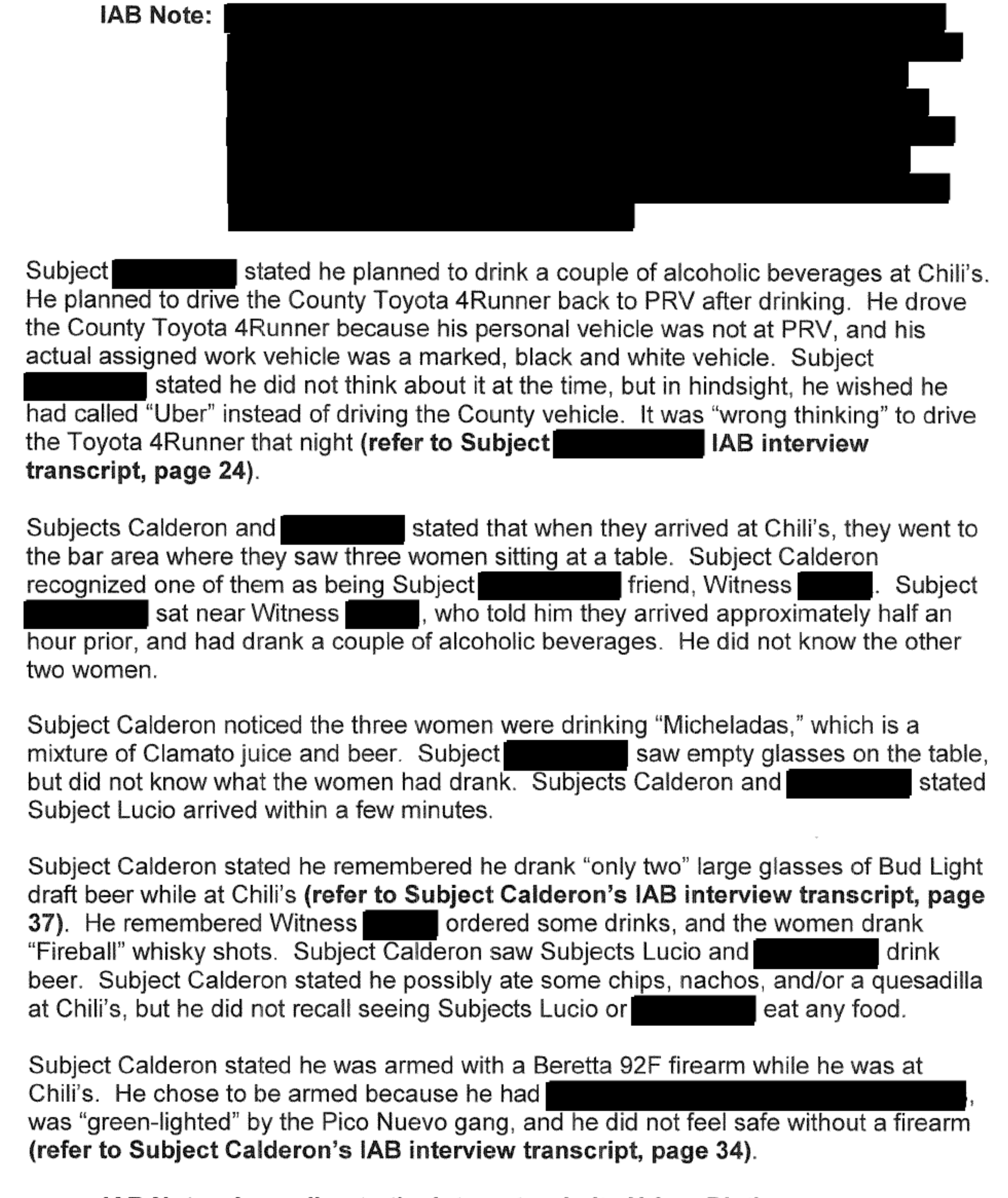
Subject Calderon stated he believed he left work to go to Chili's at approximately 2045 hours, because that was the approximate time he sent an email to Subject Lucio regarding a search warrant. Subject Calderon stated Subject [redacted] drove him to Chili's in a Toyota 4Runner, which was an undercover vehicle used by the PRV OSS team.

Subject [redacted] agreed he drove Subject Calderon as his sole passenger to Chili's in the Toyota 4Runner. However, his recollection regarding the time they left work was different; he stated they left work at 2145 hours.

IAB Note: Two emails regarding a search warrant were recovered from Subject Calderon's email account. One was sent to Subject Lucio at 2001 hours, and an email with the same topic was sent to Subject [redacted] at 2027 hours [EXHIBIT O].

Subject Calderon stated that during the drive to Chili's, Subject [redacted] told him the plan was to meet some women and to drink some alcoholic beverages. At that point, Subject Calderon decided he would have one or two drinks. He would then go meet his girlfriend, Witness [redacted], at a Best Western Hotel in Pasadena, on Colorado Boulevard just west of Rosemead Boulevard.

Subject Calderon stated he felt tired when he went to Chili's, as he had been sick. He stated he had been having dizzy spells, insomnia, was fatigued and dehydrated, and had a stomach virus. [redacted] **(refer to Subject Calderon's IAB interview transcript, page 45)**.



IAB Note: [redacted]

Subject [redacted] stated he planned to drink a couple of alcoholic beverages at Chili's. He planned to drive the County Toyota 4Runner back to PRV after drinking. He drove the County Toyota 4Runner because his personal vehicle was not at PRV, and his actual assigned work vehicle was a marked, black and white vehicle. Subject [redacted] stated he did not think about it at the time, but in hindsight, he wished he had called "Uber" instead of driving the County vehicle. It was "wrong thinking" to drive the Toyota 4Runner that night **(refer to Subject [redacted] IAB interview transcript, page 24)**.

Subjects Calderon and [redacted] stated that when they arrived at Chili's, they went to the bar area where they saw three women sitting at a table. Subject Calderon recognized one of them as being Subject [redacted] friend, Witness [redacted]. Subject [redacted] sat near Witness [redacted], who told him they arrived approximately half an hour prior, and had drank a couple of alcoholic beverages. He did not know the other two women.

Subject Calderon noticed the three women were drinking "Micheladas," which is a mixture of Clamato juice and beer. Subject [redacted] saw empty glasses on the table, but did not know what the women had drank. Subjects Calderon and [redacted] stated Subject Lucio arrived within a few minutes.

Subject Calderon stated he remembered he drank "only two" large glasses of Bud Light draft beer while at Chili's **(refer to Subject Calderon's IAB interview transcript, page 37)**. He remembered Witness [redacted] ordered some drinks, and the women drank "Fireball" whisky shots. Subject Calderon saw Subjects Lucio and [redacted] drink beer. Subject Calderon stated he possibly ate some chips, nachos, and/or a quesadilla at Chili's, but he did not recall seeing Subjects Lucio or [redacted] eat any food.

Subject Calderon stated he was armed with a Beretta 92F firearm while he was at Chili's. He chose to be armed because he had [redacted], was "green-lighted" by the Pico Nuevo gang, and he did not feel safe without a firearm **(refer to Subject Calderon's IAB interview transcript, page 34)**.

IAB Note: According to the internet website Urban Dictionary, "greenlit" is defined, "When a hit is put out on you."

IAB Note: Witness Rivero stated he did not hear about a "green light" regarding Subject Calderon, and if he had, he would have moved Subject Calderon from PRV OSS, or would have gotten Major Crimes Bureau involved. Subject [redacted] stated gang members threatened investigators assigned to PRV on multiple occasions regarding Subject Calderon's [redacted]. Subject Lucio stated he was not aware of any specific threats made to Subject Calderon from gang members, but gang members did threaten to attack deputies as a result of a recent deputy involved shooting.

[redacted]

IAB Note: [redacted]

Subject [redacted] stated he thought he drank "a couple" small draft beers and a shot of "Fireball" whisky **(refer to Subject [redacted] IAB interview transcript, page 36 and 37)**. He could not remember what Subjects Calderon and Lucio, or the women, ate or drank.

Subject Lucio could not remember eating any food at Chili's, but there may have been appetizers at the table. He saw Subjects Calderon and [redacted] each drink possibly two or three beers, but he was not sure. Subject Lucio did not know if Subjects Calderon or [redacted] ate any food.

Subject Lucio stated he drank a total of three or four draft beers and a shot of "Fireball" whisky. He believed everyone at the table drank a shot of "Fireball" whisky, as someone ordered a round of six shots of that liquor. Subject Lucio then stated he may have drank "Johnny Walker Black" and diet coke cocktails. He clarified his previous statement and said he meant he had three or four drinks in total and they could have been beer or cocktails.

Witness [redacted] stated she arranged to meet Subject [redacted] at Chili's. She went to Chili's with her two friends, Witnesses [redacted] and [redacted]. Witness [redacted] drove the three of them to Chili's in her vehicle, possibly a Honda. When they arrived at Chili's, Subjects Calderon, [redacted] and Lucio had not yet arrived. The women had appetizers and drinks. She believed she and her two friends ordered "Micheladas" before the men arrived.

Witness [redacted] could not remember if the men arrived all together or one after the other. She stated that after the men arrived, she ordered a round of six "Fireball" whisky shots and paid for it herself, but could not remember who else drank the shots. She also drank two beers that night. Subject [redacted] sat across the table from her and she saw him drink a couple of beers.

Witness [redacted] stated she drove her two friends, Witnesses [redacted] and [redacted], to Chili's in her vehicle, even though she was extremely tired. At some point, three Hispanic men joined their group, but she could not remember who they were. She believed she drank one Michelada and one beer. The Michelada made her feel sick, and she passed out. Witness [redacted] stated she did not drink a "Fireball" whisky shot.

Witness [redacted] stated she travelled to Chili's with her friends, Witnesses [redacted] and [redacted]. Sometime later, three males arrived, one of whom she knew as "[redacted]." At some point, a round of "Fireball" whisky shots was ordered, and she assumed everyone drank one shot.

Witness [redacted] was the waitress who served the group at Chili's that night. During her ICIB interview, she identified Subject Calderon as being one of the members of the group from his photograph. She was unable to identify Subjects [redacted] and Lucio from their photographs. Witness [redacted] believed there were three Hispanic women at the table and possibly five males, four of whom where Hispanic and one of whom was White. She reviewed receipts from September 9, 2014, which were attributed to the group **[EXHIBIT A, pages 230 to 232]**.

Witness [redacted] remembered one of the females in the group had two drinks and then stopped drinking. One of the females ordered a round of "Fireball" whisky and paid for the round in cash. She identified the nine Bud Light large draft beers on the receipt as being 22 ounce mugs. Witness [redacted] identified the "Johnny Walker Black" and diet coke cocktails as being doubles.

Witness [redacted] remembered one male in the group drank a beer and then drank all three of the "Johnny Walker Black" and diet coke cocktails. Witness [redacted] remembered that male as being possibly Hispanic with well-groomed dark hair, a little bit heavyset, and roughly between 30 and 35 years old. Witness [redacted] stated someone in the group asked her for the bill, which she printed out at 2313 hours. The bill was paid in cash and the group left quickly thereafter.

Subjects Calderon, Lucio, and [redacted] stated that at the time they left Chili's they felt no impairment from alcohol at all, nor did they notice any other person in the group to be impaired.

Subject [redacted] stated that when the group was preparing to leave Chili's, everyone in the group was in agreement they would go back to PRV. Subject [redacted] wanted to relax a little bit before heading home. Subject Calderon stated he needed to go back to the station to get his County vehicle, and one of the women asked him if he needed a ride to the station. He believed the women wanted to go to the station to use the restroom, and possibly for one of them to sober up.

Subject Lucio stated he planned to go back to PRV, pick up his briefcase, and then go home. He believed Subjects Calderon and [redacted] were going to go somewhere else with the women, and then eventually return to the station. Subject Lucio drove directly back to PRV shortly after 2315 hours in his Volvo by himself.

Subject Lucio stated he did not recall seeing what vehicles the others drove or how they got back to the station. He did not know Subject [redacted] drove a County vehicle to Chili's, nor did he see him leave in one. Subject Lucio stated he did not authorize Subjects [redacted] or Calderon to take a County vehicle to Chili's. He assumed they drove their personal vehicles to Chili's. However, Subject [redacted] stated Subject Lucio saw him enter the County Toyota 4Runner when the group was leaving Chili's.

Witness [redacted] stated when the group left Chili's, they went to "the bungalows in the back" of PRV to "sober up a little bit" because she "had to have been buzzing or something" from the amount of alcohol she drank at Chili's (two Micheladas and a shot of whisky). However, none of the people in the group appeared to be drunk **[EXHIBIT D, page 97]**.

Witness [redacted] stated when the group left Chili's, they went to PRV because she "wanted to sober up" **[EXHIBIT D, page 125]**.

Witness [redacted] stated that upon leaving Chili's she felt fine and "everyone looked fine," nobody seemed to be drunk, except Witness [redacted] was tired. The group went back to the trailer PRV to "sober up, I guess, so to speak" **[EXHIBIT D, pages 23 to 25]**.

Witness [redacted] stated she believed Subject [redacted] drove her to the station. She was not sure how the rest of the group got to the station. When she arrived in the trailer, she did not think anyone was inside. The group hung out in the trailer and Witness [redacted] fell asleep on a chair. At some point, she attempted to wake up Witness [redacted], but she "was still knocked out." At some point Subject Calderon left and did not return, then "some deputies walked in" **[EXHIBIT D, page 32]**. The deputies started talking to Subject Lucio in the corner of the office. She knew something had happened and she needed to leave. She felt the group should not be in the office because they had been drinking and everybody was trying to sober up. Subject [redacted] then drove the three women home in an unknown vehicle.

Witness [redacted] did not drive from Chili's to PRV, but she knew one of her female friends must have driven because she would not have gone with one of the males. The group of three women and three men hung out in the bungalow. At some point, she went to use the restroom, and when she returned, the short chubby man was gone. Nobody knew where he had gone. About an hour after they had arrived in the office, some uniformed Sheriff's Department employees came into the office. She believed Subject [redacted] went into another part of the office and talked to the two uniformed employees. Subject [redacted] returned and told the women they had to leave. Witness [redacted] did not know why they had to leave and Subject [redacted] did not tell them. Subject [redacted] drove the women home. All the women lived very close to each other in Pico Rivera. A couple of days later, Witness [redacted] told her that the male who left, had "crashed."

Witness [redacted] could not remember how she got to the station, but she believed somebody drove her car because they did not want her to drive. When she got to the station, she drank some water and then "passed out" because she was so tired **[EXHIBIT D, page AD 128).** When she woke up she was at home and her vehicle was parked in front of her house. Approximately one or two months later Witness [redacted] told her somebody had "crashed" on the night they went to Chili's.

Subject Lucio stated he arrived at the PRV OSS trailer at approximately 2330 hours. When he entered the trailer, Subject [redacted] was alone inside. Subject Lucio stated he talked to Subject [redacted] briefly, but could not remember the conversation. Subjects Calderon and [redacted] along with the three women, arrived approximately 15 minutes later.

Subject [redacted] stated the group of six people all arrived at the OSS trailer at the same time, within seconds of each other, but Subject Lucio entered the office first. Subject [redacted] recognized Witness [redacted] because she had [redacted] him and Subject [redacted] when they ate at [redacted] in the past. Subject [redacted] knew Subject [redacted] and Witness [redacted] were friends. He also assumed she was an informant of Subject [redacted] because she was very friendly to Subject [redacted]

Subject [redacted] stated Subject Lucio immediately asked him upon entering the trailer, "Hey, are we good to party in here?" **(refer to Subject [redacted]'s first IAB interview transcript, page 47)**. Subject [redacted] replied in the affirmative, but he immediately logged off his computer and left the trailer. He did not want to be involved in whatever the subjects and women planned to do in the trailer. However, Subject Lucio denied he asked Subject [redacted] the indicated question, and Subject Calderon did not recall hearing the question.

Subject Calderon said one of the women drove him back to the station, but they stopped at an unknown location on the way back to purchase snacks. He did not remember if they purchased alcohol there or not. Subject [redacted] stated he followed the vehicle in which Subject Calderon was a passenger to a "7-11"

convenience store. He saw Subject Calderon enter the store with the two women, and they purchased water, candy, and some chips. Subject [redacted] then followed the other vehicle to PRV, where they parked.

Subjects [redacted] and Calderon, with the three women, then entered the PRV OSS trailer, at approximately 2330 hours. Subject [redacted] stated he did not see Subject [redacted] in the trailer, but Subject Calderon stated Subject [redacted] was inside the trailer at the time.

Subject Calderon stated that when he entered the PRV OSS trailer, he felt the extreme need to use the restroom. He unfastened his belt and took his duty firearm off his belt because it was hurting his back and poking his ribs. Subject Calderon placed the firearm in his desk and locked the desk to secure the firearm. He then left the trailer to use the restroom, but changed his mind when he saw Subject Lucio and one of the women wanted to use the restroom as well.

Subject Calderon decided to leave PRV at that time. He said he left his firearm in his desk because he "wasn't thinking clearly" **(refer to Subject Calderon's IAB interview transcript, page 58)**. Subject Calderon left PRV without the firearm, and did not realize until much later that he had left it there.

Subject Calderon entered his County issued vehicle, an unmarked gray Ford Crown Victoria, and drove away from the station by himself. He planned to drive to Temple Station, park his County vehicle there, and pick up his personal vehicle, a silver 2002 Toyota Camry. He would then drive to the Best Western Hotel on Colorado Boulevard in Pasadena to meet his girlfriend, Witness [redacted]. Subject Calderon stated that at the time he left PRV he felt no signs of being impaired by alcohol.

Subject Calderon stated the last thing he remembered was driving out of PRV, and then he "blacked out." He did not remember if he was wearing his seatbelt. The next thing he remembered, he "came to in a daze" and felt like he was tumbling as if in an earthquake **(refer to Subject Calderon's IAB interview transcript, pages 65 to 67)**.

Subject Calderon stated he blacked out again and awakened in an unknown location in his County vehicle. He was slouched down on his side with his head near the Mobile Digital Computer (MDC). There was glass everywhere and blood was dripping from his head. He believed the MDC and radio were destroyed or nonfunctional. He felt no pain, was in disbelief, and thought he was in a nightmare.

> **IAB Note: Video camera footage depicted Subject Calderon drove northbound on Rosemead Boulevard, turned westbound onto Klingerman Street and parked his County vehicle on the north curb line of Klingerman Street at 0048 hours, which was approximately 12 minutes after his collision on Rosemead Boulevard and Reichling Street in Pico Rivera [EXHIBIT C, attachment #2].**

Subject Calderon stated he took off his shirt and used it to wipe the blood off his forehead. He exited his vehicle and saw that it had sustained a lot of damage. He realized his firearm was missing, and he could not find his County cellphone nor his personal cellphone. He did not know if he had hit an animal or a tree, or some other object. At the time, he did not consider if he had possibly collided with a person.

IAB Note: According to Google Maps, the location Subject Calderon parked his County vehicle (Klingerman Street, just west of Rosemead Boulevard, South El Monte) is a 4.7 mile drive north of the location of the collision (5430 Rosemead Boulevard, Pico Rivera) [EXHIBIT P].

Subject Calderon stated he got scared and started running northbound on Rosemead Boulevard. As he ran, he began to notice his surroundings and realized he was in South El Monte, near Whittier Narrows. Subject Calderon continued to run and still did not know if he was in a nightmare or in reality. He was in fear for the safety of his girlfriend. He believed he had possibly been followed in the past to the hotel where Witness [redacted] was staying or that a parolee had possibly tracked him there. He felt he had to get to her and make sure she was safe. Subject Calderon continued running until he reached the parking lot of the Best Western Hotel on Colorado Boulevard, just west of Rosemead Boulevard.

IAB Note: The Best Western Hotel is located at 3570 East Colorado Boulevard, Pasadena. Temple Sheriff Station is located at 8838 East Las Tunas Drive, Temple City. According to Google maps, it is a 3.6 mile walk from where Subject Calderon parked his County vehicle on Klingerman Street and Rosemead Boulevard to Temple Station. It is a 6.9 mile walk to the hotel from the location Subject Calderon parked his vehicle. Temple Sheriff Station is almost directly on the same path between the vehicle location and the hotel location [EXHIBIT Q].

Subject Calderon did not have any lucid moments where he thought he should notify a supervisor or the local Sheriff Station that he had been involved in a collision in a County vehicle. Subject Calderon did not know in which hotel room Witness [redacted] was staying. He checked his person and discovered he still had his County cellphone. Subject Calderon initially could not unlock the cellphone because he had forgotten the password, but recalled it after a short time. He called Witness [redacted] and asked for her location. At that time, Witness [redacted] walked out of her room on the second floor and made herself known to Subject Calderon.

IAB Note: Telephone records indicated a call was made from Subject Calderon's County cellphone to Witness [redacted]'s cellphone at 0159 hours [EXHIBIT A, page 239].

Subject Calderon went to Witness [redacted]'s hotel room. He did not seek medical attention because he was in no pain and was in disbelief. Witness [redacted] wiped blood off his head with a towel. Subject Calderon stated he told Witness [redacted] he did not know what happened to him, if he hit a dog, a tree, or another car, but he had to get back to his car.

Witness [redacted] testified in Subject Calderon's jury trial **[EXHIBIT J, page 1804 to 1849]**. She stated Subject Calderon appeared at the Best Western Hotel hours later than she expected him. Blood covered Subject Calderon's face and head. Subject Calderon appeared to be disoriented, as he asked her over and over if she was okay, and he did not know if someone was trying to kill him. Witness [redacted] believed Subject Calderon had possibly been attacked by gang members because he had recently been involved in [redacted] with gang members.

Witness [redacted] stated Subject Calderon had exhibited mood changes, weight gain, stress and nightmares as a result of the recent shooting. Witness [redacted] stated she did not request emergency medical attention for Subject Calderon's wounds because they were not bleeding profusely, and she was in shock. Witness [redacted] stated she wiped blood off of Subject Calderon's head, as he dozed in and out.

Subject Calderon stated he told Witness [redacted] to drive him down Rosemead Boulevard because he knew he had parked his vehicle in that direction, but he did not know the cross street. Subject Calderon believed he had to get back to his vehicle so he could see what happened and make notifications. As Witness [redacted] drove him down Rosemead Boulevard, Subject Calderon thought of the possibility that he may have hit another person in the collision. Subject Calderon did not know how long he searched for his vehicle, but he eventually found it parked on Klingerman Street, just west of Rosemead Boulevard. Subject Calderon was not aware of anyone calling his County cellphone after the collision.

IAB Note: Video camera footage depicted Subject Calderon arrived back at the location of his parked County vehicle at 0425 hours [EXHIBIT C, attachment #2].

Upon arrival at the location, Subject Calderon believed he looked through his County vehicle for his personal cellphone and his firearm. He could not believe he did not have the two items and wondered where they were. Shortly thereafter, Subject Calderon told Witness [redacted] to leave the location because he knew it was unsafe due to it being a gang area.

IAB Note: Video camera footage depicted the vehicle from which Subject Calderon had been dropped off driving away from the location at 0439 hours, leaving him there alone [EXHIBIT C, attachment #2].

Subject Calderon made several telephone calls, using his County cellphone, during the time Witness [redacted] was with him on Klingerman Street.

IAB Note: Telephone records indicated Subject Calderon used his County cellphone to call the mother of his children, Witness [redacted], at 0433 hours, for a one minute duration. He then called Subject Lucio at 0434 hours, for a five minute duration, then two calls to Subject [redacted] at 0439 hours for a total of four minutes in duration [EXHIBIT A, page 239].

Subject Calderon could not remember the cellphone call to Witness [redacted]. Regarding the cellphone call to Subject Lucio, Subject Calderon stated he told Subject Lucio where he was, he did not know what happened, and that he might have hit a tree. Subject Calderon stated Subject Lucio told him to wait at that location until somebody from the Department, possibly Subject [redacted] arrived. Subject Calderon did not tell Subject Lucio where he had been since the collision, nor did he tell him about his injuries.

Regarding the telephone call to Subject [redacted] Subject Calderon stated he told him his location, and Subject [redacted] arrived shortly thereafter. Subject [redacted] told him he hit a fence in Pico Rivera, and that he had been looking for him. Subject Calderon stated Subject [redacted] checked his face and head with his flashlight, and said something about Subject Calderon's firearm or his phone. Subject [redacted] then said something about Subject Calderon being diabetic and Subject [redacted] left to get him some food. Subject Calderon stated Subject [redacted] returned with some tacos and Subject Calderon ate them.

Meanwhile, residents of Pico Rivera had called PRV to report a traffic collision, which occurred on Rosemead Boulevard, near Reichling Lane, at approximately 0036 hours **[EXHIBIT R]**. Witness [redacted] heard a loud crash, then looked out her window and saw what appeared to be a dark colored, unmarked police car with damage on the right side, speeding away **[EXHIBIT J, pages 635 to 641]**.
Witness [redacted] heard a loud crash. She grabbed her telephone and began calling 911 as she ran outside. When she arrived at the scene of the collision, the car was already gone. She saw dust and smoke in the air, and a fence was damaged. She found a license plate on scene, which she gave to deputies when they arrived **[EXHIBIT J, pages 641 to 643].**

An emergency 902T radio call was dispatched at 0039 hours, Tag 4 **[EXHIBIT S]**. Witness Deputy Rosa Perez, Unit 151B, received the handle on the traffic collision call. Upon arrival at the collision scene, she saw a damaged fence in the median of Rosemead Boulevard. She saw dirt and grass in the street, along with the front bumper of a vehicle, which was in the southbound lanes of Rosemead Boulevard. She met Witnesses [redacted] and [redacted], who were flagging her down.

Witness Perez was not traffic trained, and did not know what to do when she arrived, but she knew she had to interview witnesses. Witness [redacted] handed her a

license plate she had found at the scene of the collision. Witness [redacted] told her a car similar to a Crown Victoria patrol car, but all black in color, had been involved in the collision.

Witness Perez told assisting units via radio to check the area for the vehicle involved in the collision. She did not believe she received any direction from Witness Sergeant Donald Nichiporuk or Subject [redacted] A PRV assisting patrol unit, Witness [redacted] arrived on scene. She took the license plate and ran it for Department of Motor Vehicles (DMV) records on her MDC. Witness [redacted] stated the return showed it belonged to a County vehicle with Subject Calderon's name associated with it. She was then directed by either Witness Perez or Witness Nichiporuk to direct traffic at the scene.

Witness Perez stated she gave the license plate to Witness Deputy Eneida Montano, Unit 152F, who was one of the assisting units. Witness Montano had arrived on scene after checking the area for the involved vehicle for a few minutes. Witness Montano later booked the license plate and the front bumper at PRV.

Witness Jose Hernandez was originally assigned to be Witness Montano's partner, but as her [redacted], he directed her to work by herself that night, with him monitoring her from another vehicle. Witness Jose Hernandez remembered being at the collision scene and helping look for the involved vehicle.

At some point, the PRV patrol sergeant, Witness Nichiporuk, Unit 150S, had arrived at the collision scene. He was later interviewed by ICIB investigators. Sergeant Nichiporuk heard the radio call go out, and briefly checked the surrounding area for the involved vehicle. Upon arrival at the collision scene, he saw Witness Perez holding a California exempt license plate. He ran the plate via his vehicle's MDC and found it returned to the Los Angeles County Sheriff's Department.

Witness Gonzalez, Unit 152B, was parked in the back parking lot of PRV when the radio call regarding the traffic collision was dispatched. He listened to the radio traffic regarding other patrol units handling the radio call. From the description of the involved vehicle, and the fact that a license plate had been left at the scene, Witness Gonzalez came to the conclusion the involved vehicle was probably assigned to OSS. He saw Subject [redacted] who was conducting a facility security check, walking in the rear parking lot of PRV.

Witness Gonzalez stated he contacted Subject [redacted] to tell him he believed the vehicle involved in the collision was assigned to OSS; however, Subject [redacted] stated Witness Gonzalez did not give him any indication that he already knew about the collision during their conversation, and that they just talked about his [redacted] and generally how things were going.

While Witness Gonzalez was talking to Subject [redacted] perhaps on the helicopter landing pad on top of the mechanic's bay, Subject [redacted] stated he (Subject [redacted]

received two telephone calls on his personal cellphone, the first at approximately 0105 hours, and the second a few minutes thereafter. The telephone calls were from Witness Nichiporuk, who told Subject [redacted] the license plate found at the collision scene was California exempt and the DMV return showed it belonged to the Los Angeles County Sheriff's Department. Subject [redacted] told Witness Nichiporuk he would attempt to ascertain to whom the vehicle was assigned.

Witness Nichiporuk stated Subject [redacted] told him there were still some OSS personnel at the station, and he would see what he could do on his end to determine the assigned driver of the vehicle associated with the license plate. Witness Nichiporuk said he then checked the area and Beverly Hospital with other assisting units, but could not find the involved vehicle. Witness Nichiporuk did not state whether he checked the parking lot of Beverly Hospital, checked with nursing staff to determine if he Subject Calderon had checked in to the hospital, or both.

Witness Gonzalez stated he may have told Subject [redacted] he knew members of the PRV OSS team had been at Chili's prior to the collision, but he did not remember any details of the conversation he had with Subject [redacted] Witness Gonzalez stated that at some point during the conversation with Subject [redacted] he (Witness Gonzalez) telephoned Subject Lucio via cellphone. Witness Gonzalez may have given Subject Lucio a brief synopsis of what happened regarding the traffic collision, and told him to call the watch commander. At the time of the telephone call, Witness Gonzalez did not know Subject Lucio was at PRV.

> **IAB Note: Telephone records indicated Witness Gonzalez called Subject Lucio's personal cellphone at 0102 hours, for a 37 second duration; and received a call from Subject Lucio's personal cellphone at 0114 hours, for a 76 second duration [EXHIBIT B, page 423].**

Witness Gonzalez stated that soon after his telephone call to Subject Lucio, he (Witness Gonzalez) left PRV in his patrol car and searched for Subject Calderon. He could not remember who told him the vehicle involved in the collision was assigned to Subject Calderon. Witness Gonzalez' stated he may have checked the parking lot of Temple Station's parking lot because he knew Subject Calderon often parked his personal vehicle at that location.

Subject [redacted] stated he decided to check the PRV parking lot and the adjacent City Hall parking lot for the involved vehicle, thinking perhaps that it had been parked at one of those locations. Subject [redacted] stated that while searching the station parking lot, he saw Subject Lucio, who was wearing civilian clothes, walk into the PRV OSS trailer at approximately 0115 hours.

Subject [redacted] decided to talk to Subject Lucio. Subject [redacted] "called him out of" the OSS trailer, but he could not remember if he knocked on the door of the trailer, telephoned him, or told Subject Lucio to come out of the trailer **(refer to Subject**

[redacted] **IAB interview transcript, pages 44 and 46)**. However, Subject Lucio stated he exited the OSS trailer to talk to Subject [redacted] because Witness Gonzalez telephoned him and told him Subject [redacted] wanted to talk to him.

Subjects Lucio and [redacted] met outside the OSS trailer. Subject [redacted] told Subject Lucio there had just been a hit and run traffic collision involving a gray slick car that crashed into a fence, leaving a bumper and a license plate at the scene. The driver of the vehicle could not be located. Subject [redacted] asked Subject Lucio to check the license plate number with his records to ascertain if the person assigned to the vehicle was one of the PRV OSS detectives. While talking to Subject Lucio, in close proximity, Subject [redacted] did not detect any signs or symptoms of Subject Lucio possibly being under the influence of alcohol.

Subject Lucio stated he entered the PRV OSS trailer and looked through his records. Subject Lucio stated Subject [redacted] and Witness Gonzalez could have entered the trailer while the three women were present, but he was not sure. Subject [redacted] and Witness Gonzalez stated they did not enter the trailer while any women were present.

Subject Lucio stated that while he was checking the license plate records, the three women, Witnesses [redacted], left the trailer to go home. Subject Lucio could not remember if he told Subject [redacted] to take the women home, if Subject [redacted] told him he was taking them home, or if the women left by themselves. Subject Lucio stated he believed the three women left first, and then Subject [redacted] left later.

However, Subject [redacted] stated he told Subject Lucio they needed to take the women home. Subject [redacted] stated he then drove the three women home, using the County Toyota 4Runner. Subject [redacted] did not have an answer regarding why he thought the women needed to be driven home, as opposed to driving home themselves **(refer to Subject [redacted] IAB interview transcript, page 67)**.

Subject Lucio discovered the license plate number given to him by Subject [redacted] was associated with the County vehicle assigned to Subject Calderon **[EXHIBIT B, page 295]**. Subject Lucio exited the trailer and re-contacted Subject [redacted] who was still with Witness Gonzalez. Subject Lucio told Subject [redacted] the information regarding Subject Calderon's vehicle.

Subject Lucio was "pretty certain" he told Subject [redacted] he had been at Chili's drinking with Subject Calderon prior to the collision, but he did not "have any independent recollection of what exactly" he told Subject [redacted] Subject Lucio stated he was "very blunt and honest" with Subject [redacted] and he told him the truth regarding where he and Subject Calderon had been before the collision **(refer to Subject Lucio's IAB interview transcript, pages 79 and 80)**.

However, Subject [redacted] stated Subject Lucio only told him he and Subject Calderon had been together at Chili's prior to the collision, but Subject Lucio did not tell him

anything about drinking alcohol at Chili's. Subject Lucio did not provide him with any time frame of when he and Subject Calderon had been at Chili's, and Subject [redacted] did not ask because he did not think it was important to establish a timeline. Of primary importance to Subject [redacted] was to locate Subject Calderon as soon as possible **(refer to Subject [redacted] IAB interview transcript, pages 50 and 51)**.

Subject [redacted] believed alcohol was probably involved in Subject Calderon's collision, because of the time of night, and the fact that the collision was a hit and run. Subject [redacted] stated he did not connect the fact that Subject Calderon had been at Chili's prior to the collision, with his belief that alcohol had been a factor in the collision, because he thought of Chili's as being a "sit down restaurant" and not a "dive bar." Subject [redacted] did not ask Subject Lucio if any alcohol was consumed at Chili's because he did not think it was important at the time. His main focus was on finding Subject Calderon, making sure he was okay, and holding him accountable for what he did **(refer to Subject [redacted] IAB interview transcript, pages 51 to 54)**.
Subject [redacted] directed Subject Lucio to telephone Subject Calderon. Subject Lucio telephoned and text messaged Subject Calderon numerous times, and probably left voicemails, but received no response.

IAB Note: Telephone records indicated 16 calls from Subject Lucio's personal cellphone to Subject Calderon's County cellphone between 0105 hours and 0309 hours, all of which were only a few seconds in duration [EXHIBIT B, page 410].

Witness Sergeant Harvey "Sandy" Crosthwaite was the watch sergeant at PRV on Early Morning shift on September 10, 2014. He remembered hearing the initial radio traffic regarding the traffic collision. Sometime later, Witness Nichiporuk told him a County license plate was found at the collision scene and a fence was damaged. At some point, it was determined the license plate belonged to Los Angeles County.

Witness Crosthwaite could not recall Subject [redacted] directing him to do anything in particular regarding the handling of the incident. He commented that Subject [redacted] was busy in the watch commander's office and he (Witness Crosthwaite) was busy in the watch sergeant's office. Witness Crosthwaite could not recall having much interaction at all with Subject [redacted] regarding the incident.

Witness Crosthwaite stated Subject [redacted] did not tell him about a meeting with Subject Lucio that shift. Subject [redacted] never told him anything about Subject Lucio being at a restaurant or bar with Subject Calderon that shift. He never saw Subject Lucio, nor any other PRV OSS team member on that shift.

Subject Lucio stated that when Subject [redacted] asked him to check his records for the license plate information, and when Subject Lucio returned to give Subject [redacted] the vehicle information, Witness Gonzalez was also present. However, Subject [redacted] stated he believed Witness Gonzalez was not present. Witness Gonzalez stated he did not believe he saw Subjects Lucio and [redacted] talking together. Subject [redacted] then

directed Subject Lucio to contact the OSS lieutenant, Subject [redacted] Subject Lucio stated he believed he called Subject [redacted] after he talked to Subject [redacted] however, records indicate he actually called Subject [redacted] first.

IAB Note: Telephone records indicated two calls from Subject Lucio's personal cellphone to Subject [redacted] personal cellphone at 0119 hours and 0120 hours, for durations of 11 seconds and 86 seconds. The telephone records indicated a call from Subject [redacted] personal cellphone to Subject Lucio's personal cellphone at 0128 hours, for a 235 second duration [EXHIBIT A, page 423].

Subject Lucio stated he told Subject [redacted] about Subject Calderon's collision in a telephone call. He directed Subject [redacted] to go to Temple Station and check for Subject Calderon's County vehicle. Subject Lucio further directed him to travel from Temple Station to PRV and search for Subject Calderon's County vehicle.

Subject [redacted] stated Subject Lucio called him multiple times. In the first telephone call, Subject Lucio asked him for Subject Calderon's personal cellphone number. At some point, Subject [redacted] asked Subject Lucio if he wanted him to help search for Subject Calderon. Subject Lucio initially told him no, but in a subsequent telephone call directed him to go ahead and search for Subject Calderon. At 0144 hours, Subject [redacted] text messaged Subjects Lucio and [redacted] with the message, "10-8," meaning he was leaving his house and starting his search **[EXHIBIT A, page 57]**.

Subject Lucio stated he told Subject [redacted] in the first telephone call there was a hit and run collision involving Subject Calderon's vehicle, the license plate of the vehicle was left at the collision scene, and he was trying to locate Subject Calderon. Subject Lucio stated he also told Subject [redacted] that he, Subject [redacted] and Subject Calderon had a few drinks at Chili's prior to Subject Calderon's collision. He further told Subject [redacted] he did not think Subject Calderon had been "intoxicated enough to crash" **(refer to Subject Lucio's IAB interview transcript, pages 77 and 78)**. However, Subject [redacted] stated Subject Lucio did not tell him the information regarding he and Calderon having been at Chili's drinking alcohol prior to the collision, via telephone at that time **(refer to Subject [redacted] first IAB interview transcript, page 12, and his second IAB interview transcript, page 4)**.

IAB Note: Telephone records indicate two calls from Subject Lucio's County cellphone to Subject [redacted] County cellphone. The first call was at 0143 hours, for an eight minute duration; and the second call was at 0206 hours, for a six minute duration [EXHIBIT A, page 248].

Subject [redacted] stated Subject Lucio told him some of the details of his telephone conversation with Subject [redacted] Subject Lucio told Subject [redacted] he told Subject [redacted] they had been drinking with girls at Chili's, they came back to the

PRV OSS office with the girls, and then at some point they found out Subject Calderon had been in an accident **(refer to Subject [redacted] IAB interview transcript, page 76)**.

Subject [redacted] who had been awakened by Subject Lucio's 0143 hours telephone call, believed Subject Lucio should have contacted him in a timelier manner regarding the incident, but he did not verbalize that to Subject Lucio. Subject [redacted] assumed Subject Lucio was still working at the time of the telephone call. Subject [redacted] told Subject Lucio he would respond to PRV, and then would contact the captain (Witness Rivero) afterwards. Subject [redacted] responded to PRV, and arrived at approximately 0230 hours.

> **IAB Note: Telephone records indicate a call was made from Subject [redacted]'s personal cellphone ([redacted]) to Subject [redacted] County cellphone at 0224 hours [EXHIBIT A, page 253]; however, Subject [redacted] could not remember any details of the phone call, and Subject [redacted] stated he did not contact Subject [redacted] before Subject [redacted] arrival at PRV.**

Witness Nichiporuk went back to the scene of the collision and met with Witness Deputy Steven Huerta, Unit 152E, who told him he found a cellphone at the collision scene. Witness Huerta stated he found the cellphone in the southbound lanes of Rosemead Boulevard amongst other debris from the collision **[EXHIBIT J, pages 1220 to 1224]**.

Witness Nichiporuk received information from Subject [redacted] via cellphone call that the license plate found at the collision scene belonged to a PRV OSS vehicle. Witness Nichiporuk took the cellphone he received from Witness Huerta to the PRV OSS trailer. While en route to the trailer, the cellphone rang and he answered it. The caller was Subject [redacted] who told him he was looking for Subject Calderon.
At the PRV OSS trailer, Witness Nichiporuk met with Subjects [redacted] Lucio, and possibly [redacted] He gave the cellphone to Subject Lucio to see if he could unlock it in order to help find the owner. Subject Lucio stated Witness Nichiporuk handed him the cellphone and told him to give it back to Subject Calderon when he was found. Subject Lucio stated he asked Witness Nichiporuk if he was done with the cellphone, and Witness Nichiporuk replied he did not need the cellphone anymore, as it had been documented.

Witness Nichiporuk did not notice any signs or symptoms of Subject Lucio being under the influence of alcohol. Subject Lucio did not say anything about him and Calderon drinking alcohol prior to the collision to Witness Nichiporuk. Witness Nichiporuk stated he was in the PRV OSS trailer for less than one minute. Witness Nichiporuk then left to continue searching for Subject Calderon and the involved vehicle. He eventually went back to the collision scene and met Witness Eddie Rivero there.

Subject [redacted] met with Subjects Lucio and [redacted] together in the PRV OSS trailer. Subject [redacted] stated Subject Lucio told him Subject Calderon had gone off duty, and the last time he saw him was at 2100 or 2200 hours. Subject [redacted] stated Subject Lucio did most of the talking, but Subject [redacted] responded to questions regarding what had been done to attempt to locate Subject Calderon. Subject [redacted] stated Subject [redacted] never told him about his knowledge of Subjects Lucio and Calderon having been at Chili's prior to the collision. Subject [redacted] stated he could not recall if he provided Subject [redacted] with that information.

Subject [redacted] stated he believed PRV was handling the incident, and OSS was assisting them in locating Subject Calderon. He did not contact Witness Rivero via cellphone until 0303 hours, because he wanted to obtain information and then accurately notify him as to what occurred.

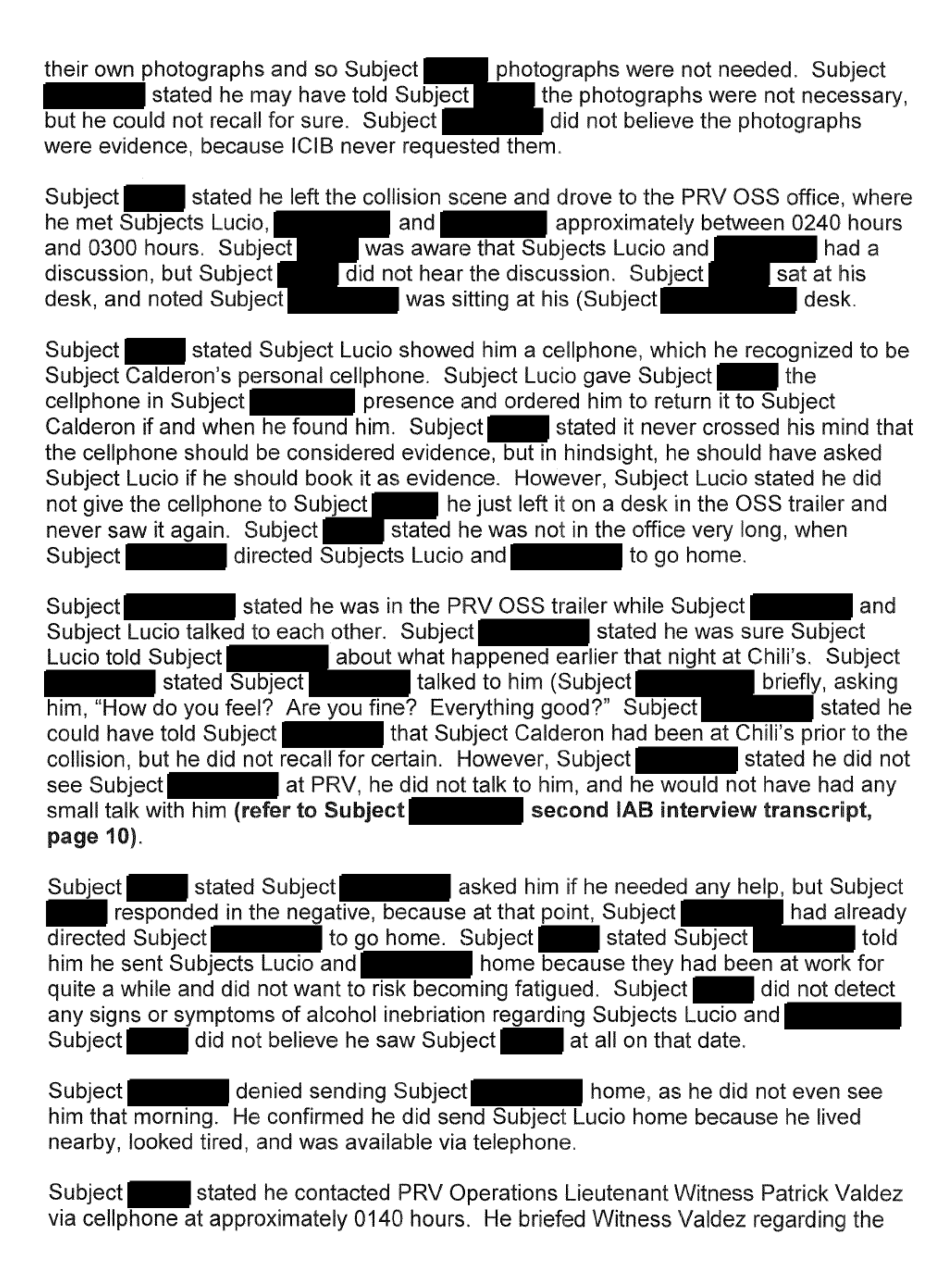
Subject [redacted] stated he drove to Temple Station in his County vehicle. He checked the parking lots at Temple Station, but could not locate Subject Calderon's County vehicle, nor his personal vehicle. He was not sure what personal vehicle Subject Calderon owned, so he ran a series of license plates of vehicles parked in the Temple Station parking lot for DMV records via MDC in order to ascertain if one of them returned to Subject Calderon as the registered owner.

IAB Note: Subject [redacted] Unit History Report indicated he ran 11 vehicle license plates for DMV records via MDC between 0210 hours and 0216 hours. Subject [redacted] stated those appeared to be the license plates of the vehicles he ran in the Temple Station parking lot [EXHIBIT T].

Subject [redacted] stated he left Temple Station and continued his search for Subject Calderon's County vehicle. He drove south on Rosemead Boulevard, checked various side streets, and perhaps checked Beverly Hospital. Subject [redacted] stopped at the scene of the traffic collision, and talked to Witness Perez. He believed he took eight photographs of the traffic collision scene, at approximately 0230 hours, with his personal cellphone in case a supervisor needed them at a later time. Subject [redacted] believed Subject [redacted] may have directed him to take the photographs; however, Subject [redacted] stated he did not direct Subject [redacted] to take the photographs. Subject [redacted] stated he sent the photographs to Subject [redacted] at 0330 hours, and also sent them to Subject [redacted] at a later time.

IAB Note: Records from Subject [redacted] personal cellphone indicated six or seven photographs were taken at the scene of the traffic collision [EXHIBIT C, pages 559 to 565].

Subject [redacted] did not believe the photographs should be considered as evidence. At a later date, when Subject [redacted] was writing a supplemental report regarding the incident, he said he asked Subject [redacted] if he should do anything with the photographs. Subject [redacted] stated Subject [redacted] told him the investigators had



their own photographs and so Subject [redacted] photographs were not needed. Subject [redacted] stated he may have told Subject [redacted] the photographs were not necessary, but he could not recall for sure. Subject [redacted] did not believe the photographs were evidence, because ICIB never requested them.

Subject [redacted] stated he left the collision scene and drove to the PRV OSS office, where he met Subjects Lucio, [redacted] and [redacted] approximately between 0240 hours and 0300 hours. Subject [redacted] was aware that Subjects Lucio and [redacted] had a discussion, but Subject [redacted] did not hear the discussion. Subject [redacted] sat at his desk, and noted Subject [redacted] was sitting at his (Subject [redacted] desk.

Subject [redacted] stated Subject Lucio showed him a cellphone, which he recognized to be Subject Calderon's personal cellphone. Subject Lucio gave Subject [redacted] the cellphone in Subject [redacted] presence and ordered him to return it to Subject Calderon if and when he found him. Subject [redacted] stated it never crossed his mind that the cellphone should be considered evidence, but in hindsight, he should have asked Subject Lucio if he should book it as evidence. However, Subject Lucio stated he did not give the cellphone to Subject [redacted] he just left it on a desk in the OSS trailer and never saw it again. Subject [redacted] stated he was not in the office very long, when Subject [redacted] directed Subjects Lucio and [redacted] to go home.

Subject [redacted] stated he was in the PRV OSS trailer while Subject [redacted] and Subject Lucio talked to each other. Subject [redacted] stated he was sure Subject Lucio told Subject [redacted] about what happened earlier that night at Chili's. Subject [redacted] stated Subject [redacted] talked to him (Subject [redacted] briefly, asking him, "How do you feel? Are you fine? Everything good?" Subject [redacted] stated he could have told Subject [redacted] that Subject Calderon had been at Chili's prior to the collision, but he did not recall for certain. However, Subject [redacted] stated he did not see Subject [redacted] at PRV, he did not talk to him, and he would not have had any small talk with him **(refer to Subject [redacted] second IAB interview transcript, page 10)**.

Subject [redacted] stated Subject [redacted] asked him if he needed any help, but Subject [redacted] responded in the negative, because at that point, Subject [redacted] had already directed Subject [redacted] to go home. Subject [redacted] stated Subject [redacted] told him he sent Subjects Lucio and [redacted] home because they had been at work for quite a while and did not want to risk becoming fatigued. Subject [redacted] did not detect any signs or symptoms of alcohol inebriation regarding Subjects Lucio and [redacted] Subject [redacted] did not believe he saw Subject [redacted] at all on that date.

Subject [redacted] denied sending Subject [redacted] home, as he did not even see him that morning. He confirmed he did send Subject Lucio home because he lived nearby, looked tired, and was available via telephone.

Subject [redacted] stated he contacted PRV Operations Lieutenant Witness Patrick Valdez via cellphone at approximately 0140 hours. He briefed Witness Valdez regarding the

incident, telling him the time of the hit and run collision involving a County vehicle, and he suspected alcohol could have been involved. Subject [redacted] told Witness Valdez what had been done so far in the attempt to locate Subject Calderon.

Subject Valdez stated he told Subject [redacted] he needed to notify OSS because it involved their personnel, but he did not give Subject [redacted] any other direction. Subject [redacted] believed he told Witness Valdez that he had already directed for Subject [redacted] to be called in to the station.

Subject [redacted] stated he asked Witness Valdez what else could be done regarding the handling of the incident, because he wanted to make sure he was doing things the right way, and was doing everything he could possibly do. However, Subject Valdez stated he did not recall Subject [redacted] asking him that question. Subject [redacted] stated Witness Valdez seemed satisfied with what had been done up to that point, and Witness Valdez did not give him any direction.

Subject [redacted] could not recall if he told Witness Valdez about Subjects Lucio and Calderon having been at Chili's prior to the collision. Subject [redacted] stated he contacted the operations lieutenant prior to the captain because he understood the operations lieutenant was to be notified first no matter the incident. However, neither Witness Castellano, nor Witness Valdez could recall ever telling Subject [redacted] that the operations lieutenant was to be notified first regarding significant incidents.

Witness Valdez stated he knew Subject [redacted] to be a very good lieutenant, who ran his shift very tightly, and was a very good administrator. He believed Subject [redacted] did not tell him Subjects Calderon or Lucio had been at a restaurant prior to the collision, nor about a conversation with Subject Lucio after the collision. Witness Valdez did not respond to PRV regarding the incident because he assumed OSS supervisors were responding, they would oversee the incident in its entirety, and they would contact him if necessary. Witness Valdez stated he did not believe Witness Castellano should have been immediately notified regarding this incident because he did not believe Subject Calderon's collision caused major damage to city property.

Subject [redacted] stated he wanted to wait until he talked to Subject [redacted] prior to calling Witness Castellano, and then Subject [redacted] could contact Witness Rivero simultaneously. Subject [redacted] telephoned Witness Castellano at 0225 hours. He told Witness Castellano basically the same information he told Witness Valdez earlier, with the addition that an Aero unit was not available. Subject [redacted] stated he asked Witness Castellano if he should do anything else regarding the handling of the incident. Witness Castellano replied in the negative and told him everything sounded good. Subject [redacted] could not remember if he told Witness Castellano that Subjects Lucio and Calderon had been at Chili's prior to the collision. Witness Castellano could not remember if Subject [redacted] provided him with that information.

Witness Castellano stated based upon the information provided by Subject [redacted] he believed Subject [redacted] was overseeing the incident and that it was being handled.

After the conversation with Subject [redacted] Witness Castellano telephoned Commander Patrick Maxwell and provided him with the details he knew at the time.

Shortly thereafter, Witness Castellano telephoned Subject [redacted] back and told him he had contacted Commander Maxwell. Witness Castellano told Subject [redacted] the only thing Commander Maxwell could think of was that he wanted Subject [redacted] to call the Aero Bureau desk and attempt to get a helicopter to assist with the search for Subject Calderon.

Witness Castellano stated he did not respond to PRV regarding the incident because OSS was responding at the time to handle the administrative portion of the incident, and the hit and run portion was already being handled by PRV or Traffic Services Detail (TSD). He stated Subject [redacted] had always done a fantastic job in every incident as watch commander, and he had confidence Subject [redacted] was handling the incident.

Witness Crosthwaite stated he occasionally worked as the watch commander at PRV in 2014. Regarding notifications to Witness Castellano, he stated there was a notification matrix, which was used in determining when to contact the captain **[EXHIBIT U]**. Witness Crosthwaite stated he was never told that notifications should be run by the operations lieutenant prior to the captain.

Subject [redacted] stated he telephoned TSD at approximately 0300 hours, and notified Witness Deputy Glenn Callaway regarding the circumstances of the incident. Witness Callaway declined to respond, and told Subject [redacted] to handle the incident at the station level. Subject [redacted] was asked by IAB investigators why he did not contact TSD until over an hour and a half after he discovered Subject Calderon's County vehicle had been involved in the collision. Subject [redacted] replied he did not know, but he had been busy and had a lot going on.

Witness Callaway was assigned to TSD in September 2014, and was on call the morning of the incident **[EXHIBIT V]**. He was at home when he received a telephone call from PRV. Witness Callaway could not remember why he did not respond to the incident, but knew later in the morning TSD Deputy Witness Aaron Percy did respond to the collision scene at 0800 or 0900 hours. Witness Callaway stated he completed a TSD notification log regarding the notification from PRV, in which he noted he received the telephone call at 0250 hours **[EXHIBIT W]**.

Subject [redacted] stated he telephoned the Aero Bureau desk at approximately 0340 hours, and was told there were no available helicopters until 0530 hours.

Subject [redacted] stated he never met with Witness Rivero on the morning of the incident. He did not know if Witness Rivero was ever briefed with the information that Subjects Lucio and Calderon had been at Chili's prior to the collision. Subject [redacted] stated he did not brief Witness Rivero regarding what he knew about the incident because he figured Witness Rivero would talk to him if he wanted to discuss anything. Subject [redacted] also stated that at some point, he telephoned Subject [redacted] who told him

he was with Witness Rivero. Subject [redacted] asked Subject [redacted] in that telephone call if they needed anything from him, and Subject [redacted] replied in the negative.

Subject [redacted] stated that he was scheduled to be off work at 0300 hours, and he wrote his work hours as being 1500 to 0300 hours on his Weekly Time Card **[EXHIBIT X]**. He actually left work somewhere between 0430 and 0500 hours. Subject [redacted] stated he did not write his correct ending time on his Weekly Time Card because it was an unwritten rule that lieutenants do not get overtime.

Subject [redacted] stated he believed that prior to leaving PRV at the end of his shift, he briefed the oncoming PRV Day shift watch commander, Sergeant Sean Geske, regarding details of the incident. Subject [redacted] completed Watch Commander Log's for PM shift on September 9, 2014, and EM shift on September 10, 2014 **[EXHIBIT Y]**. Subject [redacted] stated he did not mention Subject Calderon's incident in either of the logs because all the notifications were made via telephone, and therefore there was no reason to include the incident in the logs.

Witness Crosthwaite stated there might have been a conversation toward the end of his shift in the watch sergeant's office, wherein Witness Nichiporuk and Subject [redacted] were present. During that conversation, Witness Crosthwaite heard that PRV OSS team members had been at Chili's prior to the collision. In his own mind, Witness Crosthwaite believed there was a nexus between the Chili's and the traffic collision.

Witness Rivero stated that while he was en route to a warrant service operation at Carson Station or South Los Angeles Station, he received a telephone call from Subject [redacted] at 0303 hours. Subject [redacted] told him Subject Calderon had been involved in a traffic collision approximately two hours prior, had fled the scene, and he could not be located. Witness Rivero told Subject [redacted] he would not go to the warrant service operation, and would respond directly to Pico Rivera.

Witness Rivero stated he was bothered he was notified of the incident well over two hours after the collision occurred. He planned to deal with the late notification problem in the near future, but never was able to because ICIB took over the investigation. Witness Rivero drove directly to the scene of the traffic collision in Pico Rivera, and arrived there at approximately 0345 hours. He met with Witness Nichiporuk at the collision scene, who told him the traffic investigation was complete, and photographs of the scene had been taken. Witness Rivero directed Witness Nichiporuk to take a video recording of the scene **[EXHIBIT R]**.

Witness Rivero also met Subjects [redacted] and [redacted] at the collision scene. Witness Rivero stated Subject [redacted] told him he spoke to Subject Lucio earlier in the morning, but told him not to bother to respond to PRV. Therefore Witness Rivero was left with the impression that Subject Lucio had never been at PRV that morning **(refer to Witness Rivero's ICIB interview transcript, pages 472 and 473; and his IAB interview transcript, page 15)**.

Subject [redacted] stated he told Witness Rivero that Subject Lucio had been at the station, but he sent him home because Subject Lucio lived nearby, looked tired, and he was available via telephone if needed **(refer to Subject [redacted] first IAB interview transcript, pages 36 and 37)**. Subject [redacted] stated he told Witness Rivero at the collision scene that Subject Calderon had two "baby mamas," one in [redacted], and the other, Witness [redacted]. Subject [redacted] told Witness Rivero he was planning to go to the mother of Subject Calderon's children's home in [redacted], but the address of the other mother in [redacted] was unknown. Witness Rivero told Subject [redacted] he was going to the PRV OSS trailer to wait.

IAB investigators asked Subject [redacted] if he believed he needed to request extra resources or contact other patrol stations for assistance regarding the incident. Subject [redacted] replied, "I was going to leave it to Captain Rivero. So he... I mean, I notified him, he arrived, I spoke with him, I saw him at the scene of the TC, identified him in my mind as the incident commander, and continued on to search for Calderon at, at a residence in [redacted]." Subject [redacted] stated he assumed Witness Rivero was the incident commander because he was the highest ranking individual on scene **(refer to Subject [redacted] first IAB interview transcript, pages 29 and 30)**.

However, Witness Rivero stated he never considered himself to be the incident commander, as he arrived late, and did not relieve anybody of their command **(refer to Witness Rivero's IAB interview transcript, pages 11 and 12)**.

Subjects [redacted] and [redacted] left the collision scene together, with Subject [redacted] driving his County vehicle and Subject [redacted] the passenger, and drove toward Witness [redacted]'s home in [redacted].

Witness Rivero stated he left the collision scene at approximately 0400 hours. He searched the surrounding area for Subject Calderon and his vehicle. At approximately 0430 hours, Witness Rivero went to the PRV OSS trailer, where he sat alone for approximately 15 to 30 minutes, during which time he called Subject Calderon's County cellphone, but received no answer.

Subject [redacted] stated that while en route to Witness [redacted]'s home, he and Subject [redacted] checked side streets for Subject Calderon's vehicle. Upon arrival at Witness [redacted]'s home, Subject [redacted] parked his vehicle in front of the driveway area. Subject [redacted] decided Subject [redacted] should make contact with Witness [redacted] by himself in order not to alarm her. Subject [redacted] stated he told Subject [redacted] he had met Witness [redacted] in the past, and she should recognize him. Subject [redacted] walked to the front door of the home, and Subject [redacted] stood in the long driveway between the front door and Subject [redacted] vehicle.

Subject [redacted] contacted Witness [redacted] at the front door of her home. Subject [redacted] told her he was looking for Subject Calderon, and Subject Calderon was not

answering his telephone. He did not tell her about the circumstances of the traffic collision. Witness [redacted] replied Subject Calderon was not there. She did not know where he was, but believed he was at work.

Subject [redacted] stated he asked Witness [redacted] for the name of the other mother of Subject Calderon's children. Witness [redacted] replied the name of the other mother was Witness [redacted]. Subject [redacted] stated that was the first time he had heard Witness [redacted]'s name, as he did not know it prior to his contact with Witness [redacted].

IAB Note: Cellphone text message records indicated a text message was sent from Subject [redacted] personal cellphone to Subject [redacted] County cellphone at 0431 hours. The text message was, "[redacted]." The record indicated a return text message from Subject [redacted] County cellphone to Subject [redacted] personal cellphone at 0432 hours. The text message was, "Kool" [EXHIBIT A, page 57].

Before leaving Witness [redacted]'s home, Subject [redacted] asked her to tell Subject Calderon to call him, if she came in contact with Subject Calderon. Subject [redacted] stated he possibly provided Witness [redacted] with his personal cellphone number while he was with her at her front door, but could not remember.

IAB Note: Telephone records indicate a call was made from Subject [redacted] personal cellphone to Witness [redacted]'s personal cellphone at 0433 hours, for a duration of zero seconds [EXHIBIT B, page 410]. Records indicate a call from Witness [redacted]'s cellphone to Subject Calderon's County cellphone at 0433 hours, for a one minute duration [EXHIBIT A, page 239].

Subject [redacted] was asked by IAB investigators if he provided Witness [redacted] with his personal cellphone number by telephoning her cellphone with his personal cellphone. Subject [redacted] responded that it was possible, but he had problems at the time with his personal cellphone and the indicated telephone call might have been unintentional. He stated that prior to his arrival at Witness [redacted]'s home, he did not know Witness [redacted]'s telephone number. Subject [redacted] stated that 0433 hours was approximately the time he was at Witness [redacted]'s home, and the time was accurate within 15 minutes either way.

Subject [redacted] stated while he was at Witness [redacted]'s residence, he looked over a gate into the backyard and also checked the driveway for Subject Calderon's vehicle, or evidence that he had been there. The search met with negative results. Subject [redacted] stated Subject [redacted] told him to drive him back to PRV, where he would meet up with Witness Rivero. Subject [redacted] could then continue to search for Subject Calderon.

Subject [redacted] stated he ran the name "[redacted]" for DMV records via his vehicle's MDC. He either ran the name on the way to PRV or while he was at the station. Subject [redacted] did not know at the time that he had misspelled the name when he ran it for DMV records.

IAB Note: MDC records indicated the name "[redacted]" was run for DMV records via the MDC in Subject [redacted] County vehicle at 0435 hours and 0438 hours; however, her correct address was not returned because the correct spelling of her first name was, "[redacted]" [EXHIBIT T].

IAB Note: Witness [redacted] was interviewed by ICIB investigators on March 31, 2015. She stated nobody from the Los Angeles County Sheriff's Department came to her house in the early morning hours of September 10, 2014. She did not hear about Subject Calderon's collision until a day or two after the collision, when he called her and told her he injured his head.

Subject [redacted] stated he drove back to PRV, and dropped Subject [redacted] off approximately between 0430 hours and 0440 hours. Subject [redacted] estimated the time of his arrival at PRV was between 0430 hours and 0500 hours. Witness Rivero estimated the time of Subject [redacted] arrival in the PRV OSS trailer was between 0445 hours to 0500 hours, or after 0500 hours. Subject [redacted] stated he directed Subject [redacted] to check Beverly Hospital for Subject Calderon, then Subject [redacted] immediately entered the PRV OSS trailer, and met Witness Rivero.

Subject [redacted] stated he received a telephone call from Subject Calderon approximately five minutes after he dropped Subject [redacted] off at PRV. He believed he was in the city of Pico Rivera near the collision scene at the time.

IAB Note: Telephone records indicated two calls from Subject Calderon's County cellphone to Subject [redacted] personal cellphone at 0439 hours. The first call was 10 seconds in duration and the second call was 163 seconds in duration [EXHIBIT B, page 410].

Subject [redacted] was asked by IAB investigators about the two cellphone calls received via his personal cellphone at 0439 hours. Subject [redacted] could remember receiving only one call at that time from Subject Calderon. He stated Subject Calderon told him he did not know what happened, but he was at "Klingerman and Rosemead." Subject Calderon went on to tell him that he was unconscious and had been awakened by a telephone call from Witness [redacted] who told him someone from work was searching for him. Subject Calderon told Subject [redacted] he then called Subject Lucio to tell him his location.

Subject Lucio stated he was awakened at home by a telephone call from Subject Calderon at approximately 0530 hours; however, telephone records show he received the call earlier:

IAB Note: Telephone records indicated a call made from Subject Calderon's County cellphone to Subject Lucio's personal cellphone at 0434 hours, for a 5 minute duration [EXHIBIT A, page 239].

Subject Lucio stated Subject Calderon told him he was okay. Subject Lucio directed Subject Calderon to hang up and call Subject [redacted] or [redacted] as they were out looking for him. Subject Lucio stated he did not remember Subject Calderon telling him his location, nor where he had been for the past few hours. Subject Lucio did not ask Subject Calderon those questions because he knew Subject Calderon was in trouble and there would be an investigation. He did not want to violate Subject Calderon's rights by asking him questions that could be used against him.

Subject Lucio stated he did not notify anyone about the telephone call from Subject Calderon because Subject Calderon assured him he would call either Subject [redacted] or [redacted] and provide them with his location. Subject Lucio assumed he would get a telephone call from Subject [redacted] who would confirm Subject Calderon called him. Subject Lucio stated that after the telephone conversation with Subject Calderon, he believed he went back to sleep.

Subject Lucio was asked by IAB investigators why he wrote in his supplemental report he received the telephone call from Subject Calderon at approximately 0530 hours when the telephone call was actually received at approximately 0430 hours. Subject Lucio replied he did not look at any telephone records, and only estimated the time when he later wrote his supplemental report.

Subject [redacted] stated Subject Calderon said Subject Lucio told him to stay where he was and to call Subject [redacted] who was searching for him. Subject [redacted] stated he asked Subject Calderon if he was okay. Subject Calderon replied in the affirmative, and did not tell him about any injury at that time.

Subject [redacted] was asked by IAB investigators why he wrote in his supplemental report he received a telephone call from Subject Calderon at approximately 0530 hours, when the call was actually received at 0439 hours. Subject [redacted] replied in part, "I know, I, I need to basically apologize for that. The way I wrote my report, because I wasn't being detailed, it's not consistent with the way I normally write. I used 5:30 as like my reference point, like that's when everything was kind of centralized around." Subject [redacted] continued to explain that he used an approximate time, which was "sloppy" and "lazy." Subject [redacted] stated he tried to be general, brief, and not too detailed in his report because he followed his attorney's advice. However, he realized he "wrote a bad report" and he was accountable and responsible for it **(refer to Subject [redacted] IAB interview transcript, pages 89 to 92)**.

Subject [redacted] stated he began driving to Subject Calderon's reported location, and had another telephone conversation with Subject Calderon before he arrived there. Subject [redacted] stated that telephone call was made in order to determine if Subject Calderon was still okay, and possibly to obtain additional directions to his location.

> **IAB Note: Telephone records indicated two calls from Subject Calderon's County cellphone to Subject [redacted] personal cellphone at 0447 hours, for an 86 second duration; and a second at 0459 hours, for an 88 second duration [EXHIBIT B, page 410].**

Subject [redacted] stated he had multiple telephone conversations with Subject Lucio, before and after he arrived at Subject Calderon's location. Subject [redacted] stated Subject Lucio told him Subject Calderon had contacted him. Subject [redacted] stated Subject Lucio also told him either, "I'm going to contact," or "I already contacted Lieutenant [redacted] and to "stand by for direction from Lieutenant [redacted] **(refer to Subject [redacted] IAB interview, pages 88 and 89)**.
However, Subject Lucio stated he did not make it clear to Subject [redacted] that he would contact Subject [redacted] regarding Subject Calderon's telephone call, nor did he say anything similar to that to Subject [redacted] **(refer to Subject Lucio's IAB interview transcript, page 104)**.

> **IAB Note: Telephone records indicated seven calls made to and from Subject [redacted] personal cellphone and Subject Lucio's personal cellphone between 0500 hours and 0501 hours, all of which were only a few seconds in duration, with the exception of one call at 0501 hours, which was 132 seconds in duration [EXHIBIT B, pages 410 and 411].**

Subject [redacted] stated he did not contact Subject [redacted] until later because he believed Subject Lucio would notify Subject [redacted] as Subject Lucio received the initial telephone call from Subject Calderon.

Subject [redacted] stated that upon arrival at Klingerman Street just west of Rosemead Boulevard, he contacted Subject Calderon. Subject [redacted] stated Subject Calderon told him he blacked out, did not know what happened, did not know how he got to his current location, and wanted to know if he hit a tree. Subject [redacted] told Subject Calderon he hit a wrought iron fence on Rosemead Boulevard, and then showed Subject Calderon the photographs he had taken of the collision scene.

Subject [redacted] stated he took a photograph of a cut on the top of Subject Calderon's head at 0508 hours, and showed that photograph to Subject Calderon as well. Subject [redacted] stated he used the time of 0508 hours from the photograph as a reference time to show he arrived at Subject Calderon's location on Klingerman Street prior to that time.

IAB Note: Subject [redacted] provided IAB investigators with a photograph reportedly taken with his cellphone. The photograph reportedly depicted a gash on the back of Subject Calderon's head. The photograph was date and time stamped, "September 10, 2014, 5:08 AM [EXHIBIT Z].

IAB Note: Video camera footage from the scene depicted Subject [redacted] arrival at the location on Klingerman Street, and contacting Subject Calderon at approximately 0511 hours, based on ICIB Investigators' calculations [EXHIBIT C, attachment #2].

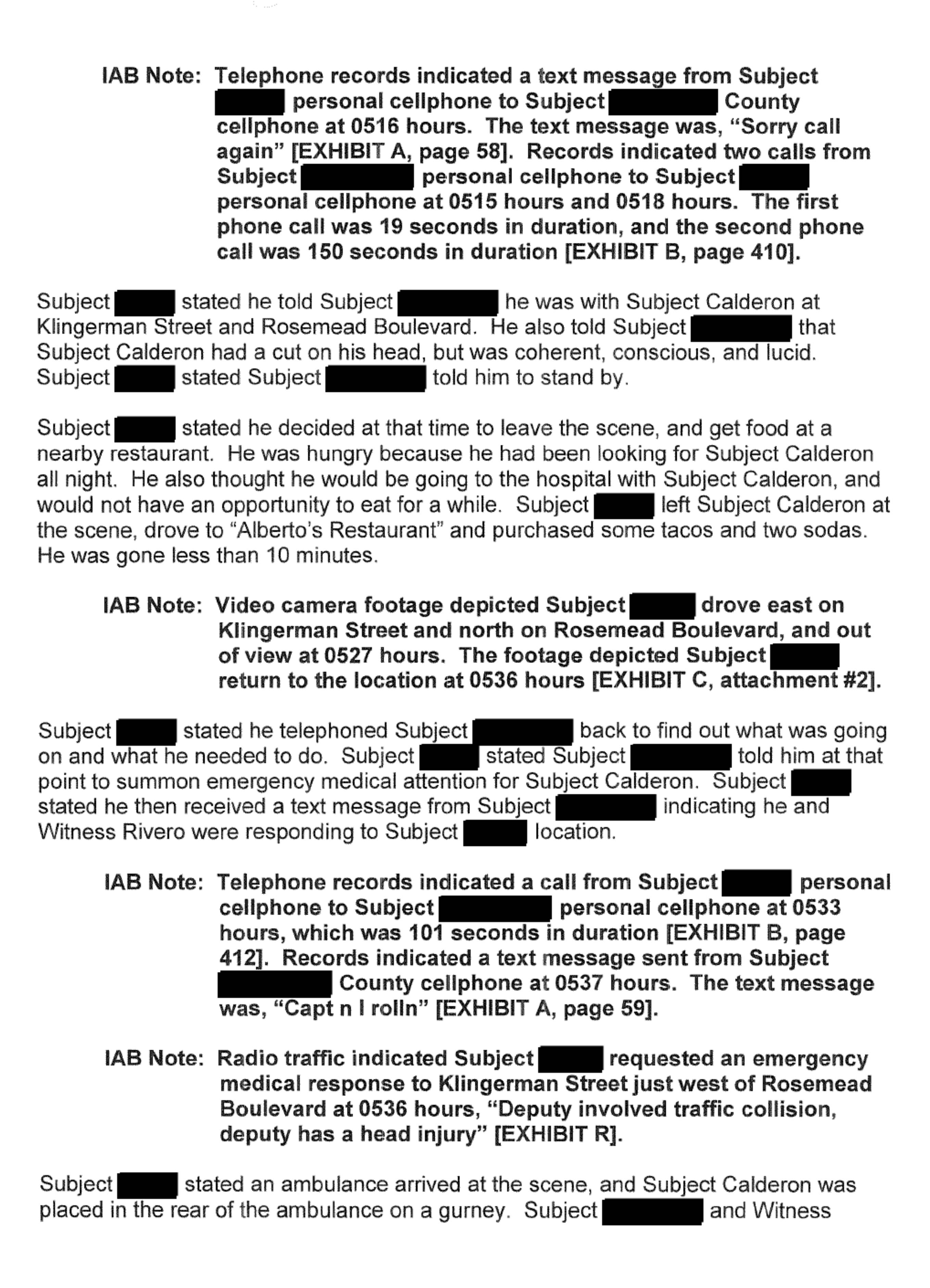
Subject [redacted] noted Subject Calderon was coherent, conscious, lucid, and seemed okay other than the cut on his head, which appeared to be closed. Subject [redacted] did not detect the odor of alcohol coming from Subject Calderon's person. Subject [redacted] asked Subject Calderon if he needed an emergency medical response, Subject Calderon responded in the negative and that he was okay. Therefore, Subject [redacted] did not request emergency medical assistance for Subject Calderon at that time. Subject [redacted] stated he received several text messages from Subject [redacted] at around that time.

IAB Note: Telephone records indicated three text messages sent from Subject [redacted] County cellphone to Subject [redacted] personal cellphone, at 0505 hours, 0509 hours, and 0511 hours. The text messages were, in order, "Here with captain," "Capt asked if u hav Oscars phone???" and, "Capt thinking bout pinging his phone..." [EXHIBIT A, page 58].

Subject [redacted] stated that when he received the three abovementioned text messages from Subject [redacted] he realized Subject [redacted] did not know he (Subject [redacted] had found Subject Calderon and was with him. Subject [redacted] stated he text messaged Subject [redacted] immediately to call him using his personal cellphone. Subject [redacted] stated he wanted Subject [redacted] to use his personal cellphone because Subject [redacted] was having issues with communicating via cellphone with Subject [redacted] and he thought Subject [redacted] County cellphone might be having technical problems.

IAB Note: Telephone records indicated a text messaged response from Subject [redacted] personal cellphone to Subject [redacted] County cellphone at 0514 hours. The text message was, "Ya is in my car. Call me on ur personal cell pls" [EXHIBIT A, page 58].

Subject [redacted] stated Subject [redacted] telephoned him in response to his text message, but the call dropped. Subject [redacted] texted Subject [redacted] to call him back. Subject [redacted] called him back, and that is when he first told Subject [redacted] that he was with Subject Calderon.



IAB Note: Telephone records indicated a text message from Subject [redacted] personal cellphone to Subject [redacted] County cellphone at 0516 hours. The text message was, "Sorry call again" [EXHIBIT A, page 58]. Records indicated two calls from Subject [redacted] personal cellphone to Subject [redacted] personal cellphone at 0515 hours and 0518 hours. The first phone call was 19 seconds in duration, and the second phone call was 150 seconds in duration [EXHIBIT B, page 410].

Subject [redacted] stated he told Subject [redacted] he was with Subject Calderon at Klingerman Street and Rosemead Boulevard. He also told Subject [redacted] that Subject Calderon had a cut on his head, but was coherent, conscious, and lucid. Subject [redacted] stated Subject [redacted] told him to stand by.

Subject [redacted] stated he decided at that time to leave the scene, and get food at a nearby restaurant. He was hungry because he had been looking for Subject Calderon all night. He also thought he would be going to the hospital with Subject Calderon, and would not have an opportunity to eat for a while. Subject [redacted] left Subject Calderon at the scene, drove to "Alberto's Restaurant" and purchased some tacos and two sodas. He was gone less than 10 minutes.

IAB Note: Video camera footage depicted Subject [redacted] drove east on Klingerman Street and north on Rosemead Boulevard, and out of view at 0527 hours. The footage depicted Subject [redacted] return to the location at 0536 hours [EXHIBIT C, attachment #2].

Subject [redacted] stated he telephoned Subject [redacted] back to find out what was going on and what he needed to do. Subject [redacted] stated Subject [redacted] told him at that point to summon emergency medical attention for Subject Calderon. Subject [redacted] stated he then received a text message from Subject [redacted] indicating he and Witness Rivero were responding to Subject [redacted] location.

IAB Note: Telephone records indicated a call from Subject [redacted] personal cellphone to Subject [redacted] personal cellphone at 0533 hours, which was 101 seconds in duration [EXHIBIT B, page 412]. Records indicated a text message sent from Subject [redacted] County cellphone at 0537 hours. The text message was, "Capt n I rolln" [EXHIBIT A, page 59].

IAB Note: Radio traffic indicated Subject [redacted] requested an emergency medical response to Klingerman Street just west of Rosemead Boulevard at 0536 hours, "Deputy involved traffic collision, deputy has a head injury" [EXHIBIT R].

Subject [redacted] stated an ambulance arrived at the scene, and Subject Calderon was placed in the rear of the ambulance on a gurney. Subject [redacted] and Witness

Rivero arrived on scene at that time. Subject [redacted] stated Witness Rivero asked him if Subject Calderon had his firearm on his person. Subject [redacted] responded that he did not know. Subject [redacted] then asked Subject Calderon if he had his firearm. Subject Calderon responded in the negative, and that he left it in the office in a desk drawer. Subject [redacted] relayed that information to Witness Rivero.

Witness Rivero stated he talked to Subject Calderon as Subject Calderon was on a gurney in the ambulance. Witness Rivero did not detect any signs or symptoms that Subject Calderon was possibly under the influence of alcohol. He asked Subject Calderon if he was okay. Subject Calderon responded, "I can't believe this happened to me. I can't believe I fell asleep" **(refer to Witness Rivero's ICIB interview transcript, Exhibit A, page 476; and his IAB interview transcript, page 19)**.

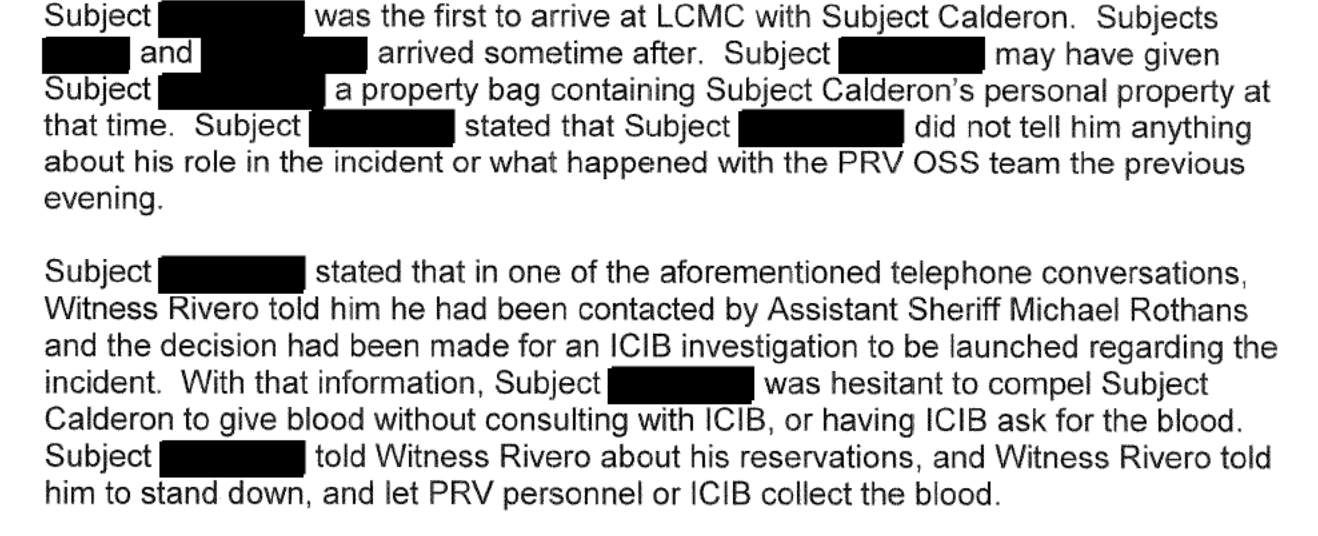
Subject [redacted] stated he talked to Subject Calderon, from about 10 feet way, through the open ambulance door. He asked Subject Calderon if he was okay, and Subject Calderon responded that he was fine. Subject [redacted] noted Subject Calderon answered the question with a clear and lucid demeanor. Subject [redacted] did not attempt to gather any details of the case from Subject Calderon, because he believed it was a criminal investigation. He did not want to insert himself in an administrative role at the point, and he had not been directed to conduct a supervisory inquiry.

Neither Subject [redacted] nor Witness Rivero notified the PRV watch commander that Subject Calderon had been found. Subject [redacted] stated he did not do so because he believed Witness Rivero was responsible. Witness Rivero stated he did not know why he did not notify the PRV watch commander, but he just wanted to get to Subject Calderon's location.

Subject [redacted] searched Subject Calderon's County vehicle, which was parked at the scene. He wanted to discover if there was a firearm or potential evidence of alcoholic consumption in the vehicle. Subject [redacted] did not see any evidence of alcohol in the vehicle, nor did he find a firearm in the vehicle.

Subject [redacted] stated Witness Rivero directed him to go with Subject Calderon to Los Angeles County Medical Center (LCMC), and to attempt to gather a blood sample from Subject Calderon for future blood alcohol analysis. Subject [redacted] stated he had reservations about following Witness Rivero's direction to attempt to gather a blood sample from Subject Calderon. Subject [redacted] stated that before he arrived at the hospital, and while he was at the hospital, he had multiple telephone conversations with Witness Rivero.

Subject [redacted] waited at the scene until a tow truck arrived and Subject Calderon's County vehicle was towed to the Los Angeles County Sheriff's Department's Fleet facilities.



Subject [redacted] was the first to arrive at LCMC with Subject Calderon. Subjects [redacted] and [redacted] arrived sometime after. Subject [redacted] may have given Subject [redacted] a property bag containing Subject Calderon's personal property at that time. Subject [redacted] stated that Subject [redacted] did not tell him anything about his role in the incident or what happened with the PRV OSS team the previous evening.

Subject [redacted] stated that in one of the aforementioned telephone conversations, Witness Rivero told him he had been contacted by Assistant Sheriff Michael Rothans and the decision had been made for an ICIB investigation to be launched regarding the incident. With that information, Subject [redacted] was hesitant to compel Subject Calderon to give blood without consulting with ICIB, or having ICIB ask for the blood. Subject [redacted] told Witness Rivero about his reservations, and Witness Rivero told him to stand down, and let PRV personnel or ICIB collect the blood.

Witness Rivero stated he telephoned Subject Lucio at 0645 hours and asked him if Subject Calderon was probably drinking prior to the collision, and Subject Lucio replied, "Probably." Witness Rivero next asked Subject Lucio, "Look, I need to ask your investigators, your team, if they knew where Calderon was last night," to which Subject Lucio responded, "Well, we left at 10:00." Witness Rivero then asked Subject Lucio if he personally saw Subject Calderon leave, and Subject Lucio replied, "Yes." Witness Rivero also asked Subject Lucio what happened in the two and a half hours between the time Subject Lucio saw Subject Calderon leave work and the time Subject Calderon was involved in the traffic collision, but Subject Lucio did not answer that question. Finally Witness Rivero told Subject Lucio, "Well, I need to know who was with him because I will find out," to which Subject Lucio responded, "Okay, I'll find out" **[EXHIBIT B, page 476] also refer to Witness Rivero's IAB interview transcript, pages 19 to 21.**

However, Subject Lucio stated Witness Rivero did not ask him any of the aforementioned questions in the 0645 hours telephone conversation, nor did Witness Rivero ask him "any questions per se." According to Subject Lucio, Witness Rivero said he needed to find out if Subject Calderon was with anybody, if anyone was in the vehicle with Subject Calderon at the time of the collision, and what Subject Calderon was doing before the collision. Subject Lucio stated he thought what Witness Rivero was saying was a little bit odd because he assumed Witness Rivero knew about the Chili's information. Subject Lucio had told Subjects [redacted] and [redacted] the information, he believed they had met up with Witness Rivero, and he imagined they had briefed him. Therefore Subject Lucio did not tell Witness Rivero in the 0645 hours telephone conversation about being at Chili's with Subject Calderon, and drinking alcoholic beverages prior to the collision **(refer to Subject Lucio's IAB interview transcript, pages 110 to 112)**.

Regarding the 0645 hours telephone conversation with Witness Rivero, Subject Lucio stated he did not tell him that Subject Calderon was "probably" drinking before the collision because that would have been a lie, and he did not lie to Witness Rivero.

Subject Lucio stated he could not remember if Witness Rivero asked him what time Subject Calderon got off work; however, he was certain Witness Rivero did not ask him any questions at all about his knowledge of what Subject Calderon did before the collision. Subject Lucio did not believe he told Witness Rivero that Subject Calderon got off work at 10 p.m., because that information was incorrect, as he knew Subject Calderon arrived at Chili's before 9 p.m. Subject Lucio stated Witness Rivero did not ask him if he personally saw Subject Calderon leave work **(refer to Subject Lucio's IAB interview transcript, pages 113 and 114)**.

Subject Lucio stated that after his telephone conversation with Witness Rivero concluded, he telephoned Subject [redacted] Subject Lucio told Subject [redacted] that he had just spoken to Witness Rivero, and it sounded like Witness Rivero did not know that he (Subject Lucio) was with Subject Calderon at Chili's. Subject Lucio stated Subject [redacted] responded, "I didn't tell him. I thought it should come from you." Subject Lucio stated that at that point he was sure Witness Rivero did not know he had been at Chili's with Subject Calderon before the collision. He then told Subject [redacted] he was going to call Witness Rivero back and tell him the information.

> **IAB Note: Telephone records indicated a call made from Subject Lucio's County cellphone to Subject [redacted] County cellphone at 0652 hours, for a one minute duration. Records indicated a call made from Subject Lucio's County cellphone to Witness Rivero's cellphone at 0909 hours, for a one minute duration, then a return call from Witness Rivero's cellphone to Subject Lucio's County cellphone at 0914 hours, for a 4 minute duration [EXHIBIT A, page 248].**

Subject Lucio stated he believed he called Witness Rivero within a few minutes of talking to Subject [redacted] He did not know why the telephone records showed a much longer gap of time between the two telephone conversations. Subject Lucio stated the gap of time could have been due to paperwork he had to complete and other telephone conversations in which he engaged.

Witness Rivero stated that in the second telephone conversation, Subject Lucio told him he was at Chili's with Subject Calderon, a couple members of the PRV OSS team, and some girls. Subject Lucio said the group had some drinks and then because they did not want to drink and drive, they went back to the PRV OSS office and had water and snacks. Subject Calderon announced that he had to use the restroom, walked out of the office and never returned. Witness Rivero stated Subject Lucio did not say anything about Subject [redacted] having this information. Witness Rivero stated that at that point he was upset because Subject Lucio had lied to him in the first telephone conversation.

Subject Lucio stated that in his second telephone conversation with Witness Rivero (at 0914 hours) he may have told Witness Rivero that he went out with Subject Calderon and a couple of people from the PRV OSS team, met some girls at Chili's, had some

drinks, and Chili's closed at 2300 hours. He did not believe he told Witness Rivero that they did not want to drink and drive, so they came back to the PRV OSS office for water and snacks. Subject Lucio stated he told Witness Rivero that Subject [redacted] had been at Chili's.

Subject [redacted] stated he received a telephone call from Subject Lucio at approximately 0600 hours on September 10, 2014. Subject Lucio told him to respond to the emergency room at LCMC, and relieve Subject [redacted] who was sitting with Subject Calderon, who had been injured in a traffic collision. He was then to hold Subject Calderon's property, and stay with Subject Calderon until ICIB investigators arrived.

> **IAB Note: Telephone records indicated a call was made from Witness Gonzalez' personal cellphone [redacted] to Subject [redacted] County cellphone at 0323 hours [EXHIBIT A, page 253]; however, Subject [redacted] and Witness Gonzalez could not remember any details of the phone call. The indicated call was incorrectly attributed to Subject [redacted] in the ICIB case book.**

> **IAB Note: Telephone records indicated a call was made from Subject Lucio's personal cellphone to Subject [redacted]'s personal cellphone at 0623 hours on September 10, 2014. That was the first telephone call indicated from Subject Lucio to Subject [redacted] on that date [EXHBIT B, page 424].**

During his IAB interview Subject [redacted] was informed of the 0623 hour telephone call from Subject Lucio, and he agreed that was probably the actual time Subject Lucio called him and directed him to go to LCMC.

> **IAB Note: The Weekly Time Card indicated Subject [redacted]'s work start time on September 10, 2014, was 0500 hours [EXHIBIT L].**

Subject [redacted] stated he wrote the 0500 hour work start time on his Weekly Time Card for September 10, 2014, because he wanted to make his work day 10 hours, so he put the time back to 0500 hours. He went on to say that he could have written his work start time as being the time he was called by Subject Lucio to go to LCMC, but he did not **(refer to Subject [redacted]'s first IAB interview transcript, page 115)**.

> **IAB Note: Detective [redacted] was initially a witness in this case, but his status was changed to that of subject on February 2, 2018, by Commander Steven Katz, due to apparent falsification of time records by Detective [redacted]**

Subject [redacted] was asked by IAB investigators why he did not write his correct starting time on his Weekly Time Card for September 10, 2014. He responded, "... I

believe Lucio told me that time since he called me around 6:00 to put an hour travel time just to, to get ready, go get my car, and meet him at the hospital, so that's why I put the 05:00 time, start time" **(refer to Subject [redacted]'s second IAB interview transcript, page 42)**.

Subject [redacted] was asked by IAB investigators why he would put in for travel time between 0500 hours and 0623 hours if he was not travelling during that time. Subject [redacted] responded, "I can't be honest for sure, so I... you know what? I don't recall exactly what he told me that day, so I might have made a mistake. I don't know" **(refer to Subject [redacted]'s second IAB interview transcript, page 43)**.

Subject [redacted] then went on to say that he wrote 0500 hours on his Weekly Time Card for that date because he did not know what time Subject Lucio called him and he assumed it was 0500 hours **(refer to Subject [redacted]'s second IAB interview transcript, page 44)**.

Subject [redacted] stated he arrived at LCMC shortly after 0700 hours. He met with Subject [redacted] who handed him a property bag containing Subject Calderon's personal items, and told him to hold the bag for ICIB. Subject [redacted] saw a wallet, a County cellphone, and other personal items in the property bag. Subject [redacted] stated Subject [redacted] or Subject Lucio told him to wait with Subject Calderon and to take him home when he got discharged from the hospital.

Subject [redacted] stated he did not tell Subject [redacted] or any other supervisor regarding his knowledge that members of the PRV OSS team had plans to drink alcohol at Chili's the previous night. He did not tell anyone that information because he was not a mandated reporter, he did not have proof that the others drank alcohol, and he did not actually see them partying.

Subject [redacted] stated he waited near Subject Calderon at LCMC. He saw that Subject Calderon had some massive lumps and multiple contusions on his head. Subject [redacted] saw embedded glass in Subject Calderon's head. Subject Calderon was erratic, angry at himself, and was crying. Subject Calderon mentioned that he had blacked out at some point.

Subject [redacted] stated Subject Calderon told him he was in a lot of pain. A nurse asked Subject Calderon what his pain level was, on a scale of one to ten. Subject Calderon replied that he was in the high eight's and nine's. Subject [redacted] saw the nurse injected Subject Calderon with painkillers.

Subject [redacted] stated Subject Calderon said, "I fucked up. I messed up," but Subject Calderon did not elaborate on what he meant **(refer to Subject [redacted]'s first IAB interview transcript, pages 86 and 87)**. Subject [redacted] did not notice any signs that Subject Calderon was possibly under the influence of alcohol.

Subject Calderon stated he did tell Subject [redacted] he "messed up." Subject Calderon stated what he meant by that phrase was he should have listened to his doctor and taken some time off from work, because he was working too much, was fatigued, and had a medical condition **(refer to Subject Calderon's IAB interview transcript, page 112)**.

Witness Valdez stated ICIB Captain Roderick Kusch directed him, via telephone, that morning to make sure there was a blood draw for Subject Calderon. Witness Valdez then directed PRV Operations Sergeant Witness Steven Dodson and PRV Traffic Investigator Witness Jose Marquez to respond to LCMC and make sure the blood draw got done.

Witness Marquez stated he arrived at work on the morning of September 10, 2014. At approximately 0700 hours. Sergeant Geske told him to go to LCMC with Sergeant Steven Dodson and get a blood sample from Subject Calderon regarding a hit and run traffic collision. Sergeant Geske told him the direction was coming from Witness Valdez. Witness Marquez telephoned TSD and spoke to Witness Percy. Witness Percy told him he was also responding to LCMC. He also told Witness Marquez not to attempt to get a blood sample from Subject Calderon nor to interview him, because the case was probably going to be handled by ICIB.

Witness Dodson stated he was en route to work at PRV when he received a telephone call from Witness Valdez. Witness Valdez directed him to meet with Witness Marquez and then respond to LCMC to oversee an interview and a blood draw from Subject Calderon, who was at the hospital as a result of a hit and run collision. Witness Dodson believed Witness Valdez told him alcohol was possibly involved.

Witness Marquez traveled to LCMC with Subject Dodson, and they arrived there at 0830 hours or 0900 hours. Witness Dodson stated Subject Calderon appeared to be apologetic and may have said, "I messed up," or something similar **(refer to Witness Dodson's IAB interview transcript, page 7)**. Witnesses Marquez and Dodson did not detect signs or symptoms of Subject Calderon being possibly under the influence of alcohol. He heard Subject Calderon agree to provide a blood sample. Witness Marquez witnessed a nurse conduct the blood draw from Subject Calderon. Witness Percy then gave Witness Marquez the blood vial.

Witness Dodson stated he was at LCMC until Subject Calderon was discharged. Witness Dodson met ICIB Sergeants [redacted] and Ray Moeller outside the hospital, who possibly told him they were taking over the investigation of Subject Calderon's incident. He saw Sergeants [redacted] and Moeller contact Subject Calderon as he walked out of the hospital. Witness Marquez drove back to PRV and booked Subject Calderon's blood sample as evidence.

Witness Percy traveled to LCMC with his partner, Witness Deputy Michael Downing. Witnesses Percy and Downing arrived at LCMC at 0900 hours.

Witness Percy, who was a Drug Recognition Expert (DRE), stated he had received a telephone call at 0800 hours on the morning of September 10, 2014. He was asked to respond to LCMC to obtain further details of the collision, and to evaluate Subject Calderon for possibly being under the influence of alcohol. Witness Percy could not recall who asked him to respond to LCMC. Witness Downing stated it was Captain Scott Johnson of Risk Management Bureau, who directed them to respond to LCMC and evaluate Subject Calderon. Witness Downing stated Witness Percy also contacted Witness Marquez prior to arrival at LCMC in order to get more details regarding the incident.

Witness Percy was told by a member of the medical staff that Subject Calderon had been administered a pain killing drug called Norco. Witness Percy did not evaluate Subject Calderon for possibly being under the influence of alcohol because the Norco would have interfered with the analysis. Witnesses Percy and Downing did not smell the odor of alcohol coming from Subject Calderon's person. Witness Percy asked Subject Calderon if he would submit to a blood test, and Subject Calderon agreed. Medical staff extracted a blood sample from Subject Calderon at 0951 hours. Witness Percy sealed the blood sample as evidence and handed it over to Witness Marquez to be booked as evidence.

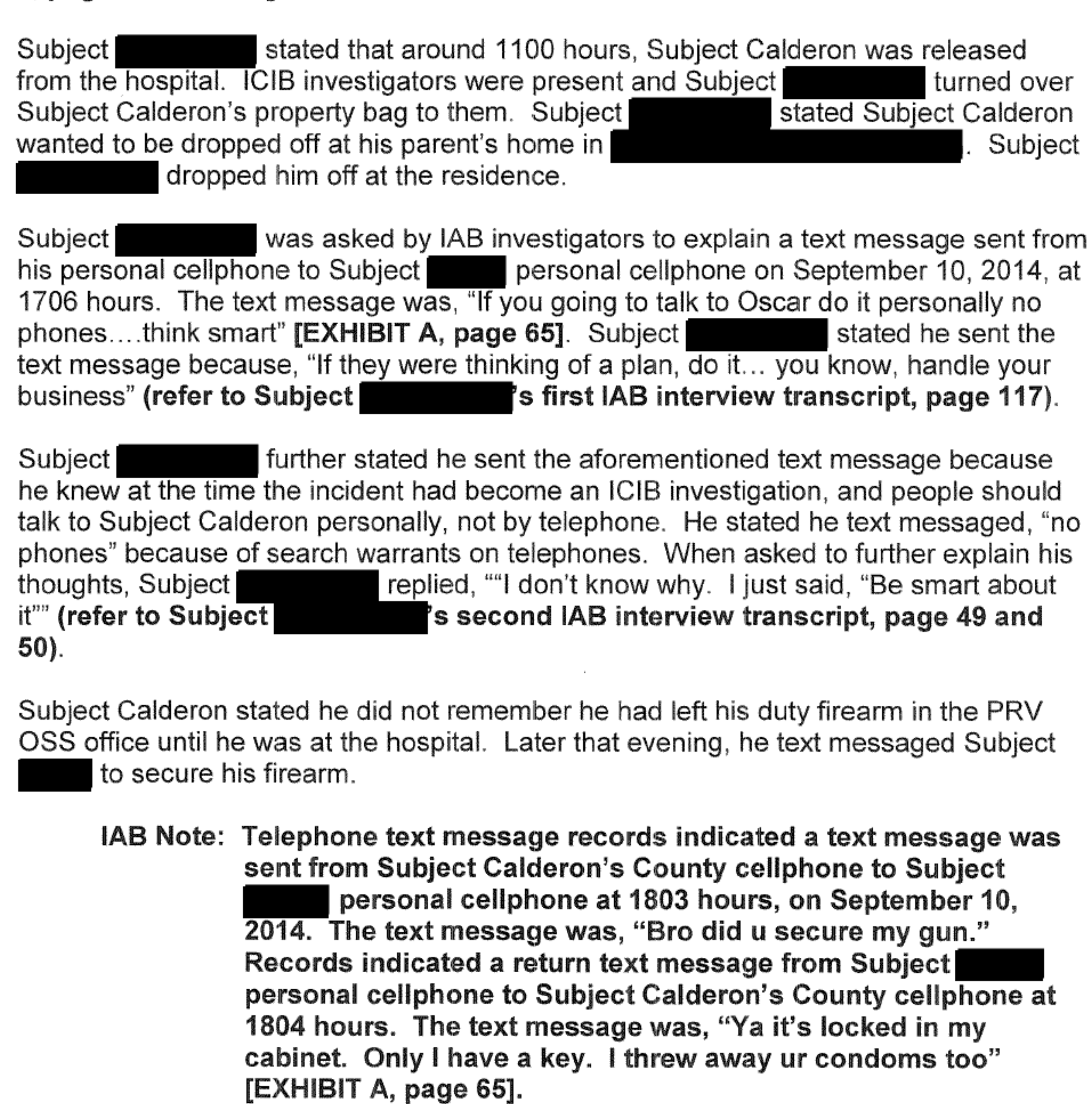
IAB Note: The toxicology report regarding the results of the testing of Subject Calderon's blood sample indicated a blood alcohol concentration of 0.00%, and negative for all other substances [EXHBIT C, pages 547 and 548].

Witnesses Percy and Downing left LCMC and traveled to the Los Angeles County Sheriff's Department's Fleet Management Bureau, where Subject Calderon's County vehicle had been towed. Witness Percy analyzed various control modules within the vehicle, which showed the driver of the vehicle was not wearing a seatbelt at the time of the collision, and there was no passenger in the front passenger seat, amongst other details. Witnesses Percy and Downing traveled to the scene of the traffic collision in Pico Rivera.

From Witness Percy's analysis of the collision scene, he determined Subject Calderon was traveling at least 70 miles per hour at the time of the collision. He also determined from examining skid marks that Subject Calderon must have used a lot of force to turn the steering wheel of his vehicle counter clockwise just prior to the collision, while traveling at an excessive speed, which caused the vehicle to lay down critical speed skid marks. Witness Percy stated it would have been hard to do or impossible to apply the amount of force on the steering wheel necessary to create critical speed skid marks if the driver were unconscious and slumping on the steering wheel.

Witness Percy determined Subject Calderon's vehicle traveled northbound on Rosemead Boulevard, impacted the west curb line, crashed through a wrought iron fence on the raised median, continued over the raised median into southbound lanes, and then impacted the west curb line of southbound lanes and crashed into a large

bush. Witness Percy determined Subject Calderon then backed up his vehicle and drove away southbound on Rosemead Boulevard. Witness Percy determined the cause of the collision was excessive speed.



Witness Percy subsequently wrote a seven page supplementary report, which included thirty pages of technical reports associated with his investigation **[EXHIBIT AA]**. He also testified in court during Subject Calderon's jury trial, on March 15, 2017 **[EXHIBIT J, pages 973 to 999]**.

Subject [redacted] stated that around 1100 hours, Subject Calderon was released from the hospital. ICIB investigators were present and Subject [redacted] turned over Subject Calderon's property bag to them. Subject [redacted] stated Subject Calderon wanted to be dropped off at his parent's home in [redacted]. Subject [redacted] dropped him off at the residence.

Subject [redacted] was asked by IAB investigators to explain a text message sent from his personal cellphone to Subject [redacted] personal cellphone on September 10, 2014, at 1706 hours. The text message was, "If you going to talk to Oscar do it personally no phones....think smart" **[EXHIBIT A, page 65]**. Subject [redacted] stated he sent the text message because, "If they were thinking of a plan, do it... you know, handle your business" **(refer to Subject [redacted]'s first IAB interview transcript, page 117)**.

Subject [redacted] further stated he sent the aforementioned text message because he knew at the time the incident had become an ICIB investigation, and people should talk to Subject Calderon personally, not by telephone. He stated he text messaged, "no phones" because of search warrants on telephones. When asked to further explain his thoughts, Subject [redacted] replied, ""I don't know why. I just said, "Be smart about it"" **(refer to Subject [redacted]'s second IAB interview transcript, page 49 and 50)**.

Subject Calderon stated he did not remember he had left his duty firearm in the PRV OSS office until he was at the hospital. Later that evening, he text messaged Subject [redacted] to secure his firearm.

> **IAB Note: Telephone text message records indicated a text message was sent from Subject Calderon's County cellphone to Subject [redacted] personal cellphone at 1803 hours, on September 10, 2014. The text message was, "Bro did u secure my gun." Records indicated a return text message from Subject [redacted] personal cellphone to Subject Calderon's County cellphone at 1804 hours. The text message was, "Ya it's locked in my cabinet. Only I have a key. I threw away ur condoms too" [EXHIBIT A, page 65].**

Subject [redacted] stated he had gone by the PRV OSS office and retrieved Subject Calderon's duty firearm from Subject Calderon's desk drawer. Subject [redacted] stated the

desk drawer did not have a lock on it. Subject [redacted] took Subject Calderon's firearm and locked it in a cabinet in the office. He subsequently returned the firearm to Subject Calderon at a later date.

Witness Sara Khagani was the doctor at LCMC who initially assessed Subject Calderon upon his arrival at the hospital. She did not observe any objective symptoms that Subject Calderon was under the influence of alcohol or drugs. Witness Khagani stated Subject Calderon answered her questions clearly, and she did not detect any sign of a concussion. She ordered standard tests be conducted of Subject Calderon's blood. Witness Khagani briefed Witness Doctor Rafael Chavez about Subject Calderon's medical condition, then went off duty **[EXHIBIT A, pages 75-C to 75-D]**.

Witness Chavez examined Subject Calderon at LCMC in the morning of September 10, 2014. Witness Chavez stated Subject Calderon told him he had been involved in a traffic collision, but became "amnestic" (could not recall the events) after the collision. He removed glass from a laceration on Subject Calderon's head. He then applied five staples to repair the wound. Witness Chavez stated that a urine toxicology test had been ordered by Witness Khagani for Subject Calderon; however, Witness Chavez decided to cancel the order. He thought the test was unnecessary because at the time he examined Subject Calderon, at 0930 hours, Subject Calderon was sober, had already been medically treated, and was to be discharged from the hospital **[EXHIBIT J, pages 1510 to 1535]**.

Witness Doctor Valerie Acevedo examined Subject Calderon's medical records and interviewed him just prior to his jury trial. She made the assumption that Subject Calderon suffered a seizure prior to the vehicle collision, and was of the opinion that Subject Calderon suffered a concussion from the collision. Witness Acevedo believed Subject Calderon may have had an infection and possibly suffered from dehydration prior to the collision **[EXHIBIT J, pages 1862 to 1888]**.

INVESTIGATION:

IAB investigators interviewed the following Department personnel: Subjects Calderon, [redacted] Lucio, [redacted] and [redacted] Also Witnesses Perez, Montano, [redacted] Jose Hernandez, Gonzalez, Valdez, Castellano, Marquez, Dodson, Callaway, Percy, Downing, Crosthwaite, Rivero, and [redacted], The interviews were digitally recorded and transcribed. For complete statements made, more information, and precise wording, see attached verbatim interview transcriptions.

IAB investigators attempted to interview Witness Nichiporuk, who retired from the Los Angeles County Sheriff's Department on July 29, 2017, but he declined to participate in an interview. As such, Witness Nichiporuk's recorded interview with ICIB investigators and his supplemental report provide his only statements related to this case.



OFFICE OF THE SHERIFF



COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

July 2, 2018

Deputy Oscar Calderon, #[redacted]

Dear Deputy Calderon:

LETTER OF INTENT

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business July 31, 2018.

An investigation under IAB File Number IV2365542, conducted by Internal Affairs Bureau, coupled with your own statements, have established the following:

1. That in violation of the Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 23152(a) California Vehicle Code (CVC), Driving Under the Influence of Alcohol or Drugs and/or 20002(a) CVC, Hit and Run Traffic Collision; on or about or between September 9 and 10, 2014; you violated State law, and/or failed to maintain a level of moral conduct in keeping with the highest standards of law enforcement personnel, and/or engaged in behavior which caused the Department to be brought into disrepute, and/or demonstrated a pattern of undesirable and/or

unprofessional behavior which was criminal in nature, as evidenced by, but not limited to:

a. driving your issued County vehicle under the influence of alcohol while not assigned to any undercover operation(s); and/or,

b. being involved in a traffic collision involving your issued County vehicle while under the influence of alcohol and causing a total loss of such vehicle due to the damage caused; and/or,

c. admitting to drinking alcohol prior to driving; and/or,

d. being arrested for and/or charged with 23152(a) California Vehicle Code (CVC), Driving Under the Influence of Alcohol or Drugs and/or 20002(a) CVC, Hit and Run Traffic Collision, (Los Angeles County Sheriff's Department Report Numbers 914-06982-1514-250 and 914-00063-2003-441); and/or,

e. being found guilty after a Jury Trial on March 24, 2017 to 23152(a) California Vehicle Code (CVC), Driving Under the Influence of Alcohol or Drugs; and/or 20002(a) CVC, Hit and Run Traffic Collision, and sentenced on July 7, 2017, to 36 months summary probation in addition to numerous court fees, fines, and court-mandated classes.

2. That in violation of the Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/090.10, Operation of Vehicles; and/or 3-01/090.07, Use of Seatbelts; and/or 3-01/040.90 Reporting Information; on or about or between September 9 and 10, 2014; you failed in keeping with the highest standards of law enforcement personnel, and/or engaged in behavior which caused the Department to be brought into disrepute, and/or demonstrated a pattern of undesirable and/or

unprofessional behavior which was criminal in nature, as evidenced by, but not limited to:

a. driving your issued County vehicle under the influence of alcohol while not assigned to any undercover operation(s); and/or,

b. driving your issued County vehicle without using the seatbelt; and/or,

c. being involved in a traffic collision involving your issued County vehicle while under the influence of alcohol and causing a total loss of such vehicle due to the damage caused; and/or,

d. failing to promptly report being involved in a traffic collision involving your issued County vehicle causing significant damage to city property and the County vehicle itself; and/or

e. admitting to drinking alcohol prior to driving.

3. That in violation of the Manual of Policy and Procedures Section 3-01/025.45, Safety of Firearms, on or about or between September 9 and 10, 2014, you were unable to exercise reasonable care and/or control of a firearm in your possession, as evidenced by, but not limited to:

a. consuming an intoxicating substance to the point where you were unable to or could not exercise reasonable care and/or control of your firearm; and/or,

b. stating you were unable to “remember” where you placed your firearm; and/or,

c. placing your firearm in an unlocked desk drawer, accessible to unauthorized personnel.

4. That in violation of the Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements During Departmental Internal Investigations, on or about March 7, 2018, you provided false, and/or misleading, and/or incomplete, and/or improper statements during your recorded interview regarding your actions on or about or between September 9 and 10, 2014; as evidenced, but not limited to:

   a. stating Deputy District Attorney Wise told you, Sheriff McDonnell called District Attorney Jackie Lacey and told her, "Oh, by the way, don't offer Oscar any... don't make him any offers. Take away any offers", and/or words to that affect, when such comments were never made by Deputy District Attorney Wise; and/or,

   b. stating Deputy District Attorney Wise told him the case should not have been filed and/or the elements of the crime were not there when such comments were never made by Deputy District Attorney Wise.

5. That in violation of the Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements During Departmental Internal Investigations, on or about March 7, 2018, you provided false, and/or misleading, and/or incomplete statements during your recorded interview regarding your actions on or about or between September 9 and 10, 2014; as evidenced, but not limited to:

a. providing misleading, and/or inaccurate, and/or false, and/or improper statements as to your traffic collision and/or whereabouts on or about or between September 9 and 10, 2014; and/or,

b. stating you did not report the traffic collision or take other appropriate action because you "blacked out" and/or "passed out" while operating your County-issued motor vehicle before you were involved in a collision, yet you were able to call your girlfriend, Witness [redacted] hours before you called a supervisor; and/or,

c. stating you did not drive your vehicle while under the influence of alcohol and was not involved in a traffic collision due to being under the influence of alcohol; and/or,

d. claiming you were involved in a traffic collision accident and did not immediately report it because you were "fatigued" and "working a lot," you got scared and ran northbound on Rosemead Boulevard to Pasadena for approximately 6.9 miles, not knowing if you were in a "nightmare or in reality."

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet, which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Kelley S. Fraser, on July 31, 2018 at 1000 hours, in her office, which is located at 211 West Temple Street, Los Angeles, California 90012. If you are unable to appear at the scheduled time and wish to schedule some other time prior to July 31, 2018 for your oral response, please call Chief Fraser's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Fraser's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Fraser's office no later than July 31, 2018.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave, which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Josie S. Woolum, Captain
Internal Affairs Bureau

JSW:JMR:jr
(Professional Standards and Training Division – Internal Affairs Bureau)

IAB FILE NO. IV2365542

Attachments

c: Kelley S. Fraser, Chief, South Patrol Division
Georgette Burgess, Departmental Employee Relations Representative, Employee Relations Unit
Jennifer Deadmond, Operations Assistant I, Internal Affairs Bureau
Vince Vasquez, Operations Assistant I, Advocacy Unit



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

January 27, 2022

FINAL COMMISSION ACTION

Subject of Hearing: *Petition on **OSCAR CALDERON** for a hearing on his **discharge**, effective October 8, 2018, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 18-213**.

The Civil Service Commission, at its meeting held on November 17, 2021, approved findings in the above-entitled case. The petitioner's objections were overruled.

Since a copy of these findings have already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Craig M. Hoetger
Interim Executive Director

Enclosure

c: Oscar Calderon
Sherry Lawrence
Vincent McGowan
Samuel Reyes

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the ***discharge****, effective October 8, 2018, from the position of Deputy Sheriff, Sheriff's Department, of*

OSCAR CALDERON
(Case No. 18-213)

ORDER OF THE CIVIL SERVICE COMMISSION

On November 17, 2021, the Civil Service Commission of the County of Los Angeles overruled the petitioner's objections. The Commission adopted as its final decision, the findings and recommendation of the Hearing Officer, Samuel Reyes, to sustain the department.

Dated this 27th day of January, 2022.

NAOMI NIGHTINGALE, President

PERCY DURAN III, Member

JOHN DONNER, Member

HEIDI SEGAL, Member

DICKRAN TEVRIZIAN, Member

AUG 26 2020

BEFORE THE
CIVIL SERVICE COMMISSION
COUNTY OF LOS ANGELES

In the Matter of the Appeal of: OSCAR CALDERON, Appellant, And COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, Respondent.	Case No. 18-213 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION.

This matter came before Samuel D. Reyes, Hearing Officer.

Vincent McGowan, Attorney at Law, represented Sheriffs Department (Respondent or Department).

Elizabeth Gibbons, Attorney at Law, represented Deputy Oscar Calderon (Appellant), who was present at the hearing.

EXECUTIVE SUMMARY

A. Parties:

a. Appellant: Oscar Calderon

b. Department: Sheriff's Department, Pico Rivera Station

B. Issues: On December 12, 2018, the Civil Service Commission certified the following issues:

a. Are the allegations contained in the Department's letter of October 5, 2018, true?

b. If any or all are true, is the discipline appropriate?

C. **Summary**: Appellant was discharged from his position of Deputy Sheriff with the Department for driving his County-issued vehicle under the influence of alcohol, for driving without wearing his seat belt, for being involved in a traffic collision that caused damage to the County vehicle, for leaving the scene of the accident, for failing to timely report the accident, for admitting he drank alcoholic beverages before driving, for being arrested and charged for violating Vehicle Code sections 20002, subdivision (a) (Hit and Run Collision), and 23152, subdivision (a) (Driving Under the Influence), for being found guilty of violating Vehicle Code sections 20002, subdivision (a), and 23152, subdivision (a), for failing to secure his firearm, and for making false statements during the Department investigation into his conduct, in violation of Department policy and State law. Based on the evidence and testimony presented at the hearing, the Hearing Officer finds the allegations to be true. The Hearing Officer also finds that discharge is appropriate.

PROCEDURAL HISTORY AND BRIEF STATEMENT OF FACTS

On July 2, 2018, the Department gave a Letter of Intent to Appellant notifying him of its intent to discharge him from his position of Deputy Sheriff. Appellant provided a response to the Department. On October 5, 2018, following review and consideration of Appellant's response, the Department notified Appellant, in a Letter of Imposition, that effective October 8, 2018, he would be discharged from his position of Deputy Sheriff.

A hearing was held on September 17 and 19, October 7 and 10, 2019, and February 20 and 25, 2020. The initial four dates were chosen in April 2019, in consultation with the parties. A list of Exhibits is attached as Appendix 1. A list of Witnesses is attached as Appendix 2, and their material testimony is summarized in the discussion of the allegations.

SUMMARY OF EVIDENCE AND DISCUSSION

Appellant's Employment and Assignment

Appellant was hired on September 21, 1998, [redacted]. After graduating from the Sheriff's Academy in 2000, Appellant worked as a custody deputy at [redacted] Center for a few months and as a courthouse deputy at three different courthouses for three to four years. [redacted] he was assigned to [redacted] In July 2008, Appellant was assigned to the Operation Safe Streets (OSS) Gang Enforcement Team, [redacted] He transferred to Pico Rivera Station in 2012, where he continued to work as a gang detective. Following the start of the ICIB investigation, Appellant was assigned to perform administrative duties at OSS Headquarters.

Appellant submitted into evidence a performance evaluation for his employment as a [redacted] and all of his performance evaluations after graduating from the Academy. With the exception of his last evaluation, for the period of January 28, 2017, to January 27, 2018, in which he was not rated because he was on approved leave, Appellant was rated [redacted] in all of the evaluations. His performance was rated [redacted] for the 2004-2005, 2006-2007, 2007-2008, 2008-2009, 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 rating periods. Appellant's rating period typically ran from January to January. Appellant has no prior discipline.

//

Evening of September 9, 2014

On the evening of September 9, 2014, after work, Appellant and two coworkers, Deputy [redacted] and Sergeant Gerardo Lucio (Lucio), met at Chili's, a restaurant located approximately five minutes by car from the Pico Rivera Station. They were joined by [redacted] friend, [redacted] and her two friends, [redacted] and [redacted]. Lucio arrived between 8:30 and 9:00 p.m., and, as Appellant recalled, Appellant and [redacted] arrived at about 9:00 p.m., a few minutes after Lucio.

There was conflict in the evidence about how many alcoholic beverages each of those present drank. The only hard evidence of what was consumed that night was provided by the restaurant bills, three duplicate receipts. The documents show that the group consumed a total of 27 drinks, or six Fireball whiskey shots, three Bacardi rum shots, two large draft Dos Equis beers with Clamato sauce, two Modelo Especial beers with Clamato sauce, nine large draft Budweiser Light beers, three Johnny Walker whiskey shots, one Jack Daniels whiskey shot, and one Captain Morgan shot. The receipts do not show any food being consumed.

Appellant testified that he only drank two draft Budweiser Light beers, but did not remember the size of the glass in which the beers arrived. He also drank water. Appellant did not recall all that the others had drunk, but did remember that there were two empty beers in front of the women when he arrived. [redacted] testified he had two beers and a shot of whiskey. Lucio testified he drank one beer and three Johnny Walker shots. Lucio recalled the draft beers were served in 16-ounce glasses. [redacted] and Lucio testified that Appellant drank alcoholic beverages, but neither recalled how many drinks Appellant had consumed. The women did not testify, but at the criminal hearing, [redacted] testified she had

four or five drinks. In their ICIB interviews, [redacted] and [redacted] each estimated they consumed two drinks. Based on the total number of alcoholic beverages ordered and the testimony from the others, Appellant understated his alcoholic beverage consumption.

The restaurant bills were generated at 11:13 p.m., and those present estimated they stayed about another 10 to 15 minutes before leaving. Appellant estimated they left after 11:30 p.m. Appellant testified he did not feel he was under the influence of alcohol at the time he left. He further testified that, with the exception of the petite woman with them who appeared drowsy, none of the others appeared to be under the influence. Lucio similarly testified that no one in the group appeared to be intoxicated.

All six went to the OSS office trailer after leaving Chili's. As [redacted] phrased it, they went to the station to "hang out, wind down, and extend the night." [redacted] who was driving [redacted] arrived at about 11:30 p.m. Lucio arrived shortly after 11:30 p.m. Appellant, who was in a vehicle with [redacted] and [redacted] stopped at a 7-Eleven convenience store for chips and water before returning to the office. Appellant estimated he arrived at the OSS office close to midnight.

Appellant testified that when he left Chili's he just wanted to go to the office to pick up his car. He had planned to meet his girlfriend [redacted] [redacted] aka '[redacted] ([redacted] at a Best Western Hotel in Pasadena (Best Western), and she was already upset he was late.

While at the office, Appellant placed his service weapon in his desk drawer because it was hurting his side. Appellant did not remember if he locked the drawer, but deemed the office a secure location. The door to the trailer automatically locked when closed, and only

OSS team members had keys. On that night, other deputies were present, and they were accompanying the three visitors. The women were not left alone in the office.

As established by the testimonies of Appellant, Lucio, and [redacted] and undisputed facts, namely the time the bill was generated at Chili's and, as set forth below, the time the accident was reported to the police, Appellant left the OSS office at approximately 12:30 a.m.

Hit and Run Collision

The Department requires OSS detectives to leave their private vehicles at the closest station to their work and to drive a County vehicle into the Pico Rivera Station OSS office. Appellant left his private vehicle at the Temple Station, which was located about a 10-minute drive away. On the morning of September 10, 2014, Appellant left the Pico Rivera Station and headed north on Rosemead Boulevard, his usual route. He was driving a County-issued vehicle, a dark grey 2009 Ford Crown Victoria.

It is undisputed that Appellant was involved in an accident on the 5400 block of Rosemead Boulevard, south of Havenwood Avenue, in Pico Rivera. The testimonies of Internal Criminal Investigation Bureau (ICIB) Lieutenant [redacted] ([redacted] and Lucio, who reviewed pertinent documents, including the Deputy Daily Worksheet of the first deputy on the scene of the accident, Deputy Rosa Perez (Perez), establish that the accident was reported at 12:39 a.m. Upon arrival at the scene at 12:43 a.m., Perez noticed a 15- to 20-foot section of the wrought iron median fence on the southbound lanes and broken auto parts scattered across the center median and southbound lanes. Investigation by Perez and other Department personnel documented multiple tire marks, debris strewn on the median and on the south side of Rosemead Boulevard, including the vehicle's front bumper, and damaged

vegetation on the west side of Rosemead Boulevard. Deputies recovered a license place later determined to belong to Appellant's vehicle. Deputy Steven Huerta found Appellant's personal cell phone on the southbound lanes of Rosemead Boulevard.

The road slightly curved in a northerly direction at the site of the accident. Perez concluded, with the assistance and cooperation of other investigators, that Appellant lost control following the curve on the road, turned too sharp, collided with the center median, and drove across the center median. As discussed below, these findings are consistent with those of accident reconstruction expert Deputy Aaron Percy (Percy).

A witness who heard the noise from the accident reported seeing a dark vehicle resembling Perez's patrol vehicle speeding northbound on Rosemead Boulevard. On November 5, 2014, Senior Criminalist [redacted] completed a forensic examination of the vehicle. She observed blood on the bottom of the front driver's side seat back, the steering wheel, the back and top of the car computer, the front of the front passenger side seat bottom, and the exterior of the rear passenger side door near the top.

As a result of the accident, the vehicle suffered extensive damage to its front and passenger side. The front bumper and grill were gone. It had a large dent on the driver's side. It was ultimately deemed totaled and was scrapped. The value of the loss was calculated to be $19,504.76. On September 17, 2014, the City of Pico Rivera submitted a claim for damages in the sum of $5,787 for the estimated cost to repair the Rosemead Boulevard center median wrought iron fence, which claim the Department paid.

Appellant drove the vehicle from the scene of the accident to Klingerman Street, just west of Rosemead Boulevard, a distance of 4.7 miles. A camera from a nearby business

recorded his arrival, at approximately 12:48 a.m.[1] Appellant exited the vehicle, walked around it, examined it, and looked inside of it. At the hearing, Appellant testified that he was looking for his personal cellular telephone and for his gun. He left at approximately 12:51 a.m. He walked east on Klingerman Street and then north on Rosemead Boulevard.

The same camera that recorded Appellant's initial departure from the Klingerman/Rosemead location recorded his return at approximately 4:26 a.m. He was driven to the location by a woman in a dark vehicle. Appellant appeared to search the vehicle, and then walked around it. They stayed around the vehicle before the woman left at approximately 4:39 a.m. Appellant then walked to the corner of Klingerman Street and Rosemead Boulevard, where he stayed until [redacted] arrived, at approximately 5:11 a.m. [redacted] examined Appellant and the two appeared to talk. [redacted] left at 5:28 a.m., and returned about seven minutes later.

Appellant testified that he suffered a blackout after he left the OSS trailer and that he did not recall the accident or how he ended up at the Klingerman Street location.[2] Appellant testified that did not feel he was impaired when he left the station, and did not attribute the

[1] The time displayed on the video is 42 minutes earlier than the actual time, as determined by [redacted] based on his comparison with known facts, such as the actual time on his phone and watch when he obtained the video, two days after the accident, and the time Deputy [redacted]) called for assistance.

[2] Appellant was permitted to present evidence of the facts and circumstances surrounding the conviction, including evidence pertaining to his state of mind at the time of the accident. This evidence was permitted as it may bear on the appropriateness of discharge as a penalty for suffering the conviction, but not to collaterally attack the conviction. His situation was analogized to that of a person who holds a license issued by the State of California whose license the State seeks to discipline because he/she suffered a criminal conviction. (See, e.g., *Arneson v. Fox* (1980) 28 Cal.3d 440; *Brandt v. Fox* (1979) 90 Cal.App.3d 737; in which licensees were permitted to present facts and circumstances surrounding the conviction for purpose of determining licensure or license discipline.)

blackout to the consumption of alcohol. He testified that the blackout was likely the result of stress or fatigue resulting from various causes, including the impact of recent incidents involving gang activity. Appellant further testified that he woke up slouched over in the vehicle. The vehicle computer was crooked in front of him. The car was damaged, with glass everywhere. He felt warm, and realized he was bleeding. He could not find his gun or his cell phone. Disoriented and concerned for his safety and that of his girlfriend he started running toward the Best Western, located on Colorado Boulevard just west of Rosemead Boulevard, a distance of 6.9 miles.

Appellant testified that he was still delirious and confused when he arrived at the Best Western. He also testified that he called [redacted] from the parking lot of the hotel, using his County-issued phone. Phone records show that Appellant called [redacted] 1:59 a.m. She took him into the room, where she cleaned him up. Appellant testified that he did not recall where the car was, and that [redacted] drove him around, looking for the car. When they found the car, he and [redacted] looked for his personal phone, where he had information about [redacted], without success. He finally told her to leave for her safety, as they were in gang territory. Appellant recalled calling someone from the Department, and was told to stay in the corner, that someone will come to get him. He next saw [redacted] and later other deputies and paramedics. Appellant testified he did not recall his conversations with [redacted]

Percy, a detective with the Traffic Services Detail unit, testified as a witness for the Department. He examined the vehicle on September 10, 2014, and the scene of the accident on September 11, 2014. From an examination of the vehicle's Event Data Recorder or "black box," Percy concluded that Appellant had not been wearing his seat belt at the time of the accident, which conclusion, supported by the scientific evidence and not contradicted, is

sufficient to establish that Appellant was not wearing a seat belt after he left the Pico Rivera Station on the early morning of September 10, 2014. Appellant did not contradict Percy's testimony, testifying that he did not recall if he was wearing his seat belt.

Based on his examination of tire marks left on the road and the points of impact, Percy was able to determine the cause of the accident. Percy concluded that the accident was caused by excessive speed, which he estimated to have been approximately 70 miles per hour. The posted limit was 40 miles per hour. Appellant's sudden braking while driving northbound on Rosemead Boulevard Avenue led to the initial collision with the northbound west-side curb and to skidding in a counterclockwise movement. The vehicle then crossed the center median, moved into the southbound lanes of Rosemead Boulevard, and ended up hitting some brush on the west side of the road. A piece of wood lodged itself on the vehicle's front-end grill. In Percy's opinion, in order for the vehicle to have skidded in the manner in which it did, the driver had to maintain a constant grip on the steering wheel, turning and holding on. After hitting the brush, the vehicle backed into the southbound lanes of Rosemead Boulevard and proceeded to leave the scene in a northerly direction.

In Percy's opinion, the skid marks and points of impact are inconsistent with a driver losing consciousness. An unconscious driver could not maintain the necessary grip on the steering wheel or make the required constant turns. An unconscious driver would become limp and the force of the turn would cause him to slide into the passenger's side. This opinion is supported by physical evidence and scientific analysis and is credited.

Contacts with Department Personnel

Between the time he left the OSS office and 4:34 a.m., Appellant did not report the accident or contact any Department supervisor. Appellant explained that he did not call

earlier because he was just in a daze, in a nightmare, confused, and not really aware of his situation. In somewhat contradictory testimony, when asked on cross-examination if he believed he had done anything wrong Appellant replied that, in retrospect, not reporting the accident in a timely manner.

Appellant's excuse for failing to report the accident or his location to Department personnel for approximately four hours is not credible. Although Appellant testified that he did not call before 4:34 a.m. because he was in a state of confusion, which he described as being in what seemed like a nightmare, he did many things that demonstrated a conscious state of mind, such as driving away from the scene of the accident, searching for his personal cellular telephone and gun upon arrival at the Klingerman location, running in the direction of the Best Western, knowing the route he was taking, calling [redacted] meeting her, ignoring multiple calls from his colleagues, and coming back to Klingerman for the car. Appellant's testimony that he wished he had reported the accident earlier also demonstrates awareness of the accident and his failure to report it.

Appellant called Lucio, his supervising sergeant, at 4:34 a.m. The time of the call, as well as that of other calls, was established by telephone records obtained during the investigation. Before making this call, Appellant had called [redacted] at 1:59 a.m., as noted above, and [redacted]), the [redacted], at 4:33 a.m.

Appellant testified that he did not recall any details of his conversation with Lucio. Lucio testified that he told Appellant to call [redacted] who was looking for him. Lucio further testified that he did not ask Appellant about the incident because he knew Appellant was in trouble and would have to make statements to investigators. Neither man provided any

additional detail about what was said during the five-minute call. Appellant called [redacted] at 4:39 a.m., a call that lasted three minutes.

Before Appellant's 4:34 a.m. call to Lucio, Department personnel learned that the vehicle involved in the accident had been assigned to Appellant and commenced a search for him. At approximately 1:15 a.m., after receiving information about the license plate and bumper found at the scene of the accident, Lieutenant [redacted], Pico Rivera Station Early Morning Watch Commander, called Lucio to ask if the vehicle whose license plate found at the accident site was assigned to anyone in his unit. Lucio confirmed that it was the license plate of the County vehicle assigned to Appellant.

After the initial contact from [redacted] Lucio called Appellant's County phone. Not receiving an answer, Lucio called [redacted] and [redacted] to obtain Appellant's personal cellular phone number. [redacted] recalled that Lucio called him at around 1 to 1:30 a.m., and testified that Lucio said something happened and asked for Appellant's cell phone. Lucio later informed [redacted] that he had been unable to contact Appellant. [redacted] Lucio, and [redacted] testified that they called Appellant's County and personal telephones several times, but were unable to establish contact with Appellant.

As established by telephone records, Appellant called [redacted] at 4:39 a.m., after the conversation with Lucio. [redacted] testified that Appellant told him that a call from [redacted] had awakened him, that he called Lucio, and that Lucio had told him to call [redacted] who was looking for him. Appellant told [redacted] he was at the Klingerman location, and [redacted] agreed to meet Appellant.

Upon arrival at the location approximately five minutes later, [redacted] testified, he saw Appellant standing by the vehicle, which was parked on the North side of Klingerman Street.

[redacted] observed damage he described as moderate to severe on the front end of the vehicle. Appellant had a laceration on top of his head with dry blood around it, but said he was "okay" and appeared lucid and coherent. Appellant said he blacked out and that he had been awakened at the current location by a call from [redacted] They remained at the location for approximately 30 minutes, "awaiting for direction." Appellant did not recall if [redacted] left after his initial arrival, but [redacted] testified that he left for about eight minutes to get food for both of them. [redacted] called for medical assistance for Appellant after the Lieutenant, Martin Rodriguez (Rodriguez) directed him to do so.

Los Angeles County Fire Department paramedics arrived at approximately 5:45 a.m., and examined Appellant. Appellant was taken by ambulance to the Los Angeles County + University of Southern California Medical Center (Hospital).

Hospital Admission

An ambulance took Appellant to the Hospital, where he arrived at 6:17 a.m. He received treatment for a five-centimeter head laceration, which included removal of a small glass particle and the placement of superficial sutures. He was administered Norco, a combination of Acetaminophen and the opioid Hydrocodone, when the glass was removed. The discharge diagnoses were "Laceration, Scalp; Head Injury, with Brief Loss of Consciousness; Motor Vehicle Accident, Collision with Utility Pole or [sic]." (Exh. 43, at p. 9.) As Chavez stated during his testimony at Appellant's criminal trial, the diagnosis of brief loss of consciousness was made on the basis of Appellant's report. A CT scan was taken, which showed no injury or other abnormality. There were no objective signs of a concussion, such as vomiting, nausea, dizziness, blurred vision, or headaches. Appellant was prescribed Ibuprofen and Norco at the Hospital for pain.

Hospital staff drew blood at 6:36 a.m. for the purpose of providing treatment. There is no evidence that this sample was analyzed for the presence of alcohol or drugs. The initial treating physician, Sarah Kahani, M.D., ordered urine toxicology analysis. A subsequent attending physician, Rafael Chavez, M.D. (Chavez) cancelled the order at 9:27 a.m. As he explained at the criminal trial, the test was unnecessary, as Appellant appeared sober and he was about to be discharged.

The Traffic Services Detail unit was notified of the accident at approximately 8:00 a.m., and Percy was sent to the Hospital. Percy planned to conduct a Drug Recognition Evaluation. However, he was told Appellant had been given Norco for pain and decided not to conduct the evaluation, as the Norco would skew the results. Percy did ask Appellant for a blood sample for blood alcohol analysis. Appellant consented to the blood draw, which was done at 9:57 a.m. by a Hospital nurse. As set forth in a September 16, 2014 report from the Department's laboratory, "The sample has a blood alcohol concentration if 0.00%." (Exh. 44, at p. 1.) Chavez testified at the criminal trial that unless a person's blood alcohol level was at .18 or .20, he would not expect any measurable alcohol in the blood nine hours after alcohol was last consumed.

At the request of Captain Rivero, [redacted] asked Appellant about his firearm at the Hospital. Appellant said it was in his desk in the OSS office. [redacted] confirmed that Appellant's firearm was in his desk drawer, which was unlocked.

Criminal Proceedings

On September 8, 2015, Appellant was charged with violating Vehicle Code sections 20002, subdivision (a), and 23152, subdivision (a). He was arrested on September 9, 2015, and released on his own recognizance.

Deputy District Attorney Ann Marie Wise (Wise) was assigned to prosecute the criminal matter. On or about November 16, 2016, Wise met with Appellant and his criminal defense attorney, Louis Shapiro, to discuss the possibility of a plea. Wise presented the plea, and informed Appellant and his attorney that the terms had been discussed at the highest level of the District Attorney's Office and that the offer would not get any better. Wise testified she did not mention the name of then Sheriff James McDonnell or state that the Sheriff had taken a position on the disposition of Appellant's case. Wise also testified that she did not tell Appellant that the case should not have been brought or words to that effect, and that she did not tell Appellant that the elements of the crime were not present or otherwise call into question the elements of the crime. Wise testified she did not have any other substantive discussions about a plea in Appellant's presence.

A criminal trial involving the charges against Appellant commenced on March 10, 2017, and continued through March 24, 2017. Appellant presented evidence in support of his defenses that he was not under the influence of alcohol, that he blacked out due to factors unrelated to alcohol beverage consumption, and that he ran from the vehicle out of fear for his life in a confused state. He testified about his health and mental conditions and the incident on August 2014. In addition, Valerie Acevedo, D.O. (Acevedo), a neurologist, testified about her theory that Appellant had suffered a seizure.

On March 24, 2017, in the Superior Court of California, County of Los Angeles, Downey Courthouse Division, State of California, in case SDY06606, Appellant was convicted, following a trial by jury, of violating Vehicle Code sections 20002, subdivision (a), and 23152, subdivision (a), misdemeanors. On July 7, 2017, the Court suspended imposition of sentence and placed Appellant on summary probation for 36 months on terms

and conditions that included payment of $2,278 in fines and fees, payment of $19,504.76 in restitution to the Department, and completion of alcohol and substance abuse rehabilitation programs. On August 22, 2018, the Appellate Division of the Superior Court, County of Los Angeles, State of California, upheld the conviction.

Additional Evidence Presented in Appellant's Defense

[redacted]

[redacted]

Appellant testified that he was strongly impacted by the incident. He experienced nightmares, flashbacks, mood swings, anxiety, remorse, and lack of sleep. He could not

watch movies or news programs that depicted shooting. As required by Department policy, Appellant was [redacted]

On August 25, 2014, feeling fatigued, Appellant presented to his personal physician at Kaiser Permanente (Kaiser). He was diagnosed with [redacted], and was prescribed medication. Appellant testified that the doctor told him to take one week off work to let his body rest and to drink fluids to avoid dehydration. Instead, he only took one or two days off, a decision he regrets. Appellant has not taken any other time off to deal with any of his medical or mental conditions.

Appellant testified that all day on September 9, 2014, he was feeling anxious, tired, fatigued, stressed, overwhelmed, and confused.

Appellant presented records from Kaiser in support of his contention that he continued to suffer [redacted] On October 1, 2014, Appellant presented to Kaiser complaining of neck and knee pain. He reported feeling anxious, distracted, moody, and having difficulty sleeping, and was diagnosed with [redacted] Except for written instructions to address his physical condition, no treatment was prescribed. Appellant testified that the doctors declined treatment because the symptoms were deemed the result of a work-related injury.

On March 7, 2017, Appellant presented to Kaiser's Newport Beach Neurology Center with a chief complaint of "unexplained loss of consciousness," and was seen by Acevedo.

(Exh. S, at p. 1.) Appellant provided details about his job, which he described as very stressful, and about the [redacted] incident. With respect to the September 10, 2014, accident, Acevedo recorded Appellant's report to her: "He remembers getting in the car and driving and [is] completely amnestic to the other events. The next thing he remembers is waking up next to his car." (*Id.*, at p. 2.) Acevedo's assessment included that Appellant displayed symptoms of anxiety and PTSD. She wrote: "From this encounter, it is uncertain why [Appellant] had the [Motor Vehicle Accident] and why he was amnestic to the event. The behavior he exhibited during the time can be seen in a post-ictal [*sic*] state following a seizure (he was sleep deprived, ill and dehydrated), falling asleep at the wheel and hitting his head or in an episode of PTSD following the accident." (*Ibid.*) Acevedo did not order additional diagnostic testing and did not provide any treatment.

On March 20, 2017, Acevedo testified for the defense in Appellant's criminal trial. In pertinent part, she testified: "Well, obviously no one was in the car with him so we don't know for sure why he blacked out. My theory after reading all of the records and what he had been going through was that he had perhaps a seizure and that as a result of that passed out and then hit his head during the motor vehicle accident. [¶] I also assumed that following a seizure somebody can go into what they call a posticidal state where a person becomes very confused often times they don't know what they are doing. A posticidal state can last for hours. Sometimes it's been known to last up to a couple of days, but that would be unusual. [¶] Ask [*sic*] so that was kind of my theory. He didn't remember anything. There was a lot of amnesia that was going up until the point he got to the hospital. At which point he was evaluated and seemed to be kind of coming back to focus so to speak." (Exh. T, at p. 1865.)

Acevedo did not testify at the hearing. Her prior testimony in the criminal hearing is hearsay in the administrative hearing, and is insufficient to form the basis of a finding. Moreover, the testimony cannot be used to explain or corroborate other testimony, as hers was the only expert testimony about Appellant's mental state at the time of the incident. Appellant's testimony that he "blacked out," is lay testimony, which is itself in question. In any event, Acevedo's testimony, even if taken at face value, is not persuasive. Acevedo's testimony is entirely reliant on Appellant's report, and, as Acevedo herself conceded, her opinion constitutes a "theory" that contains "assumptions." As she had written in her notes approximately two weeks earlier: "[i]t is uncertain why [Appellant] had the [Motor Vehicle Accident] and why he was amnestic to the event." (Exh. S, at p. 2.)

Appellant testified that he was singled out for discipline because he was not part of any Department "tattooed" group. He named several individuals whom he identified as belonging to specific groups, but did not articulate what specific actions these individuals may had undertaken in furtherance of the alleged conspiracy or otherwise present any persuasive evidence to support his speculation. Moreover, Appellant did not claim that the decision-maker in this case, former Chief, South Patrol Division, Kelly S. Fraser (Fraser), or the witness who explained the Department's decision at the hearing, Chief of the Detectives Division, Patrick Nelson (Nelson), were part of the conspiracy. In any event, the undersigned has independently evaluated the evidence and determined the appropriateness of the discipline imposed.

Credibility Resolution

Testimony central to Appellant's defense, namely, that he blacked out before the accident, was shown to be false by more credible evidence, namely, the testimony of

accident reconstruction expert Percy and the scientific evidence and the objective findings of other investigators. This dishonesty brings into question his entire testimony. His credibility is further brought into question by the fact that he made several additional assertions that were either contradicted by his own testimony, by the testimony of others, by undisputed facts, or by facts more likely to be true. For instance, despite his assertion that he did not report the accident until his call to Lucio because he was in a state of confusion, Appellant testified that he wished he had called in earlier. He understated his alcoholic beverage consumption at Chili's. Appellant told [redacted] that he had awakened from his blackout by a call from [redacted] which is inconsistent with the fact that he was conscious for hours while going to the Best Western or in the company of [redacted] As set forth below, he made false statements to Department investigators. In addition, Appellant's testimony was largely uncorroborated. [redacted] did not testify about Appellant's condition or his actions on September 10, 2014, and her unavailability to provide corroborating testimony was not established at the hearing. Accordingly, when contradicted by other testimony or contrary evidence, Appellant's testimony has not been credited.

Department Investigations

[redacted] then a sergeant with ICIB, conducted the initial investigation, which commenced on the morning of September 10, 2014. On August 28, 2017, Sergeant Brian Godwin (Godwin), a sergeant with the Internal Affairs Bureau (IAB), was assigned to conduct the administrative investigation. He gathered evidence obtained during the criminal investigation and trial, and interviewed several witnesses, including Appellant. Godwin prepared an Investigative Summary on May 11, 2018, and an Investigative Summary

Addendum in June 2018, which he submitted to Department managers with evidence gathered during the investigation.

On March 7, 2018, after providing the subject admonition and form, which Appellant signed, Godwin and his partner, Sergeant Michelle Alo (Alo), interviewed Appellant. As he did at the hearing, Appellant told Godwin that he did not drive while under the influence of alcoholic beverages, that he did not remember being in an accident, that the last thing he remembers was leaving the OSS trailer, and that he "blacked out" at some point after leaving the station. He did not know how he ended up at Klingerman. Appellant stated that when he then came to, he was in what felt what felt like a daze, recalling a nightmare where he had tumbled or overturned the car. He was slouched with his head near the vehicle's computer and glass was everywhere. Blood was dripping from his head but he felt no pain. Appellant realized that he did not have his gun, and, fearing for his life, started running north on Rosemead. Appellant told Godwin that as he ran, he was still not sure if what he was seeing and feeling was real or a nightmare, a feeling that remained with him until he was at the Hospital. He also stated that he was suffering from fatigue. Appellant denied blacking out due to the consumption of alcoholic beverages.

Appellant also told Godwin that he ran toward the Best Western on Rosemead Boulevard, which route took him past Temple Station where his car was. Once he arrived at the hotel, Appellant realized he had his County phone. He unlocked the phone and called [redacted] He met [redacted] in her room, and told her he did not know what had happened, but that he thought he had hit a tree. After about one hour, she drove him to find the County car, which he believed to be in some street off Rosemead Boulevard. He eventually spoke to Lucio or [redacted] but did not remember if they called or if he received a call to notify them.

When asked why he had not reported the accident earlier, Appellant attributed it to his state of confusion.

During his interview, Appellant questioned the impartiality of the judge and the District Attorney's Office. He stated:

"Calderon: So even the judge is not fair with me and went out of her way. And the District Attorney herself when I met with her more than numerous times in front of my attorney said that this case shouldn't have been filed. The elements of the crime were not there.

"Alo: This is what the...

"Calderon: And then...

"Alo: ...District Attorney..

"Calderon: ...this is what District Attorney Wise said, and she went as far as to say the [*sic*] Sheriff McDonnell called Jackie Lac[*e*]y and they pushed this. It took more than a year for them to do what they were gonna do, so they did. And she herself said out of her mouth that Sheriff McDonnell called Jackie Lac[*e*]y, who was in Korea at the time ... how would I know that? That's what Wise said. Then said, 'Oh by the way, don't offer Oscar any ... don't make him any offers. Take away any offers.' Any criminal, any person has a right to get a deal when ... even a child predator even a murder suspect. They're all given the deal, 'Hey, we'll give you 20 years.' Even that was taken away from me.

"Alo: Did you, did you try to negotiate and then, then because of that she told you what she said?

"Calderon: DA Wise told us that; that her boss was pressured by her, by Sheriff McDonnell to push this through and that he want an offer. She and they, the DA's office and

whoever it was behind her pushing this through wanted to force me to take this DUI hit, accept that you had a DUI and all this, and a hit-and-run, or we're gonna file conspiracy on you, a felony. I said, well, then, that's my right to... it's my constitutional right to fight this. [¶] . . . [¶]." (Exh. 7, at pp. 127-128.)

Appellant's statements that he did not drive while under the influence of alcoholic beverages, that he blacked before the accident, that he did not make contact with Department personnel for about four hours after the accident because he was fearful, fatigued, and confused, that Wise stated that the case should not have been filed or that the elements of the crime were not there, and that Wise said former Sheriff McDonnell pressured the District Attorney's Office to deny Appellant a plea deal are false.

More credible evidence established the contrary of Appellant's assertions. The jury's verdict established that appellant drove while under the influence of alcoholic beverages. As set forth above, Percy's testimony established that Appellant could not have been unconscious at the time of the accident. Percy's testimony is consistent with that of Chavez. Chavez testified that Appellant did not display any of the symptoms associated with a concussion, which testimony is supported by the medical records. Appellant's uncorroborated testimony is insufficient to establish that Wise made the statements attributed to her. Rather, her contrary testimony is credited. Her testimony was detailed and credibly presented. While Wise was the prosecutor in the criminal case, she has not interest or stake in whether Appellant retains his job; accordingly, she was deemed to be a disinterested witness, which factor weighed in the assessment of her credibility.

Department Policies and Disciplinary Decision

The initial decision in this case was made by Fraser, who is no longer working for the

Department. As set forth in the June 26, 2018 Disposition Sheet, Fraser concluded that Appellant violated Department policy by consuming alcoholic beverages prior to driving a County vehicle, by driving while under the influence of alcoholic beverages, by being involved in a hit-and-run accident, by being arrested for driving under the influence and for being involved in a hit-and-run accident, by failing to timely report the accident, by suffering a conviction for the crimes, by failing to use his seat belt, by failing exercise reasonable care or control of his firearm, and by making false statements during the IAB investigation. Fraser determined that discharge was the appropriate discipline. Fraser's decision was upheld by a panel composed of Assistant Sheriffs Jill F. Serrano and Kelly L. Harrington and Undersheriff Jacques A. La Berge, and later endorsed by Sheriff James McDonnell.

Nelson, the Chief of the Detective Division, testified at the hearing in support of the Department's decision. Nelson reviewed the materials gathered during the IAB investigation and several of those gathered during the criminal investigation, including the investigative reports, transcripts of Appellant's interview and criminal court testimony, transcripts of other witness interviews, reports and photographs pertaining to the accident and its investigation, and court records regarding the criminal case. Nelson agreed with the decision to discharge Appellant and with the findings in the Disposition Sheet. In fact, he had reviewed some of the materials prior to Fraser's decision, and expressed his agreement with the decision to discharge Appellant at the time the decision was made. In Nelson's view, Appellant engaged in serious misconduct that damaged the public service, breached the public trust, reflected poorly on the Department, exposed the Department to civil liability, and endangered public safety. Nelson was also concerned about Appellant's dishonesty, both in leaving the scene of

the accident, which made subsequent investigation of his impairment more difficult, and in making false statements to IAB investigators.

The Department concluded Appellant violated Manual of Policy and Procedure (Manual) section 3-01/030.05 (General Behavior); Manual section 3-01/030.10 (Obedience to Laws, Regulations and Orders), as it pertains to Vehicle Code sections 23152, subdivision (a) and 20002, subdivision (a); Manual section 3-01/040.69 (Honesty Policy); Manual section 3-01/040.70 (False Statements), and Manual section 3-01/040.75 (False Statements in Department Investigation); Manual section 3-01/090.10 (Operation of a Vehicle); Manual section 3-01/090.07 (Use of Seatbelts); Manual section 3-01/040.90 (Reporting Information); and Manual section 3-01/025.45 (Safety of Firearms).

The Department has promulgated Guidelines for Discipline and Education-Based Alternatives (Guidelines). The version of the Guidelines initially relied upon by Department decision-makers, which had the effective date of August 1, 2014 (2014 Guidelines), was found to have been unilaterally implemented by the Department in violation of the Employee Relations Ordinance, Ordinance 9646, and rescinded by the Employee Relations Commission on December 16, 2019. The Guidelines in place before the invalidated changes were effective September 28, 2012 (2012 Guidelines).

Nelson testified that Sheriff Alex Villanueva has instructed decision makers to use the 2012 Guidelines to evaluate all cases, including those decided under the 2014 Guidelines. Nelson also testified that his analysis of the appropriate level of discipline is the same under the 2012 or 2014 Guidelines. Moreover, the discipline recommended under 2012 Guidelines and 2014 Guidelines is the same for all except two of the violations. In one of the changes, the range for violation of Manual section 3-01/040.75 was increased from a 10-day

suspension to discharge in the 2012 Guidelines to a 25-day to discharge in the 2014 Guidelines. In the second instance of change, involving Manual section 3-01/090.07, the 2012 Guidelines did not have a disciplinary range for the violation and the 2014 Guidelines provided for a two-day to a four-day suspension.

The 2012 Guidelines, permit discharge for some of the Manual sections Appellant is alleged to have violated. Discharge can be imposed for violation of Manual sections 3-01/040.70, 3-01/040.75, and 3-01/025.45. Discipline in the range of a 15-day to a 30-day suspension is recommended for operating a vehicle while under the influence of drugs or alcohol in violation of Manual section 3-01/030.10. The other violations provide for lesser discipline.

[redacted]

[redacted]

[redacted]

Appropriateness of Discipline

The Department established that Appellant violated multiple policy provisions on September 10, 2014, and during his March 7, 2018 IAB interview. The 2012 Guidelines permit discharge for some of the established violations. Appellant made false statements to IAB investigators in violation of Manual section 3-01/040.75, which violation, in the existing circumstances, is sufficient to sustain the discharge. In addition to his false statements to investigators and raising concerns about future similar misconduct, Appellant engaged in dishonest conduct by leaving the scene of the accident and not contacting the Department for approximately four hours, thus preventing proper investigation of all facts surrounding the incident, including the extent of his impairment.

While Appellant argues that the recommended discipline for driving under the influence is a suspension of up to 30 days, Appellant's conduct involved much more than driving under the influence. The accident involved significant property damage and personal injury. Appellant left the scene of the accident, and failed to notify the Department for approximately four hours. He was arrested and later convicted by a jury of driving while under the influence of alcoholic beverages and hit-and-run driving. He made false statements to IAB investigators, minimizing his behavior and seeking to excuse his behavior.

Appellant's actions breached the public trust, endangered public safety, and exposed the Department to civil liability, and, therefore, resulted in harm to the public service.

Appellant's leaving the scene of the accident, his false statements to IAB, and his continued utterance at the hearing of statements minimizing his involvement in the accident and its aftermath show that Appellant has not accepted responsibility for his actions. Such lack of acceptance increases the likelihood that similar misconduct will recur. Discharge is therefore appropriate.

[redacted] does not warrant imposing lesser discipline on Appellant as the deputies' cases are insufficiently similar to Appellant's situation. [redacted] Appellant thus engaged in far greater misconduct. Appellant's excellent work performance and lack of prior discipline are insufficient to warrant a different result.

FINDINGS OF FACT

1. Appellant was hired on September 21, 1998, as [redacted] After graduating from the Academy in 2000, Appellant worked as a custody deputy at [redacted] Center, as a courthouse deputy, as a patrol deputy in [redacted] and as a deputy in the OSS Gang Enforcement Team. In 2010, while at [redacted], Appellant was [redacted] He transferred to Pico Rivera Station in 2012, where he continued to work as a gang detective. Appellant's performance was rated [redacted] or higher during his employment with the Department, receiving a rating of [redacted] in a majority of his evaluations. Appellant has no prior discipline.

2. On September 9, 2014, Appellant joined two coworkers, Lucio and [redacted] friend [redacted] and two of her friends, [redacted] and [redacted] at Chili's, a

restaurant near the OSS office. He arrived at approximately 9:00 p.m. and remained until about 11:30 p.m. While there, Appellant consumed alcoholic beverages. He admitted consuming two draft beers, which the evidence established were served in 16-ounce glasses, but actually consumed a higher, undetermined, number of alcoholic beverages.

3. Appellant and the five others left Chili's after the restaurant closed, and went to the OSS office trailer to hang out, wind down, and extend the night.

4. While at the OSS office trailer, Appellant stored his service handgun in his unlocked desk drawer. The weapon remained in the desk drawer after Appellant left. In leaving the gun in an unlocked desk drawer while the three women were in the OSS office, Appellant failed to exercise reasonable care and control of his firearm.

5. Appellant left the OSS office at approximately 12:30 a.m., driving a County-issued vehicle, a dark grey 2009 Ford Crown Victoria. By his own admission, Appellant had consumed alcoholic beverages within the two to three hours before he left the Pico Rivera Station. As established by the jury verdict, Appellant was under the influence of alcoholic beverages at the time he left.

6. At approximately 12:35 p.m., as he was driving northbound on Rosemead Boulevard south of Havenwood Avenue in the City of Pico Rivera, Appellant caused a traffic accident. Driving at an excessive rate of speed, at least 70 miles per hour in a 40-mile-per-hour zone, Appellant lost control of the vehicle as he applied the vehicle's brakes while approaching a curve in the road. Appellant's sudden braking led to an initial collision with the northbound west-side curb and to skidding in a counterclockwise movement across Rosemead Boulevard. The vehicle then crashed through the center median, drove into the southbound lanes of Rosemead Boulevard, and ended up hitting some brush on the west side

of the road. In light of the force he had to apply to the brakes, his handling of the steering wheel as the car skidded, and his ability to drive away after the accident, Appellant was conscious during the accident. This finding is based on the credible testimony of accident reconstruction specialist Percy, which was corroborated and supported by the reports of Perez and other investigators.

7. During the collision, Appellant dislodged a 15- to 20-foot section of the wrought iron median fence on Rosemead Boulevard. He also left broken auto parts, including the front bumper, scattered across the center median and southbound lanes. A piece of wood lodged itself on the vehicle's front-end grill. Appellant lost the vehicle's license plate and his personal cellular telephone at the site of the accident. Appellant hit his head against the vehicle's windshield, and suffered a head laceration and several contusions.

8. As a result of the accident, the vehicle suffered extensive damage. The front bumper and grill were severed from the vehicle. The car had a large dent on the driver's side. It was ultimately deemed totaled and was scrapped, a loss of $19,504.76. On September 17, 2014, the City of Pico Rivera submitted a claim for damages in the sum of $5,787 for the estimated cost to repair the Rosemead Boulevard center median wrought iron fence, which claim the Department paid.

9. Appellant was not wearing his seatbelt at the time of the accident.

10. Appellant did not remain at the site of the accident, or timely report it to law enforcement authorities, which in the case of the City of Pico Rivera was the Department. Instead, he drove the vehicle from the scene of the accident to Klingerman Street, just west of Rosemead Boulevard, a distance of 4.7 miles. A camera from a nearby business recorded his arrival, at approximately 12:48 a.m. Appellant exited the vehicle, walked around it,

examined it, and left at approximately 12:51 a.m. He walked east on Klingerman Street and then north on Rosemead Boulevard.

11. At approximately 4:26 a.m., as established by the same camera that recorded Appellant's initial departure from the Klingerman/Rosemead location, [redacted] drove Appellant to where he had left the County vehicle. [redacted] left at approximately 4:39 a.m.

12. Except for the facts that he left the Klingerman location at approximately 12:51 a.m., that he made contact with [redacted] and that he returned to the vehicle at approximately 4:26 a.m., it is unclear what Appellant did between 12:51 a.m. and 4:26 a.m. Appellant did not credibly account for his whereabouts. His testimony that he was in a nightmare, confused, and not aware of his situation, is not credible. It is not supported by persuasive medical evidence or opinion or by corroborating testimony; rather, the evidence establishes that Appellant was conscious at the time of the accident and thereafter.

13. Because the vehicle's license plate had been left at the scene of the accident and due to subsequent investigation, Appellant's supervisor, Lucio, learned that Appellant may have been involved in an accident. Between 1:15 a.m. and 4:34 a.m., Lucio, [redacted] and other Department personnel unsuccessfully attempted to locate Appellant. At 4:34 a.m., Appellant called Lucio, and reported the accident and his current location.

14. After his conversation with Lucio, Appellant called [redacted] who arrived where Appellant was at approximately 5:11 a.m. [redacted] examined Appellant and spent time talking to Appellant. At approximately 5:35 a.m., [redacted] called for assistance, and Los Angeles County Fire Department paramedics arrived at approximately 5:45 a.m.

15. Appellant was taken by ambulance to the Hospital, where he received treatment for his injuries. He also consented to provide a blood sample for toxicology analysis. The sample, drawn at 9:57 a.m., contained a blood alcohol concentration of 0.00%.

16. On September 8, 2015, Appellant was charged with violating Vehicle Code sections 20002, subdivision (a), and 23152, subdivision (a). He was arrested on September 9, 2015, and released on his own recognizance.

17. On March 24, 2017, in the Superior Court of California, County of Los Angeles, Downey Courthouse Division, State of California, in case SDY06606, Appellant was convicted, following a trial by jury, of violating Vehicle Code sections 20002, subdivision (a), and 23152, subdivision (a), misdemeanors. On July 7, 2017, the Court suspended imposition of sentence and placed Appellant on summary probation for 36 months on terms and conditions that included payment of $2,278 in fines and fees, payment of $19,504.76 in restitution to the Department, and completion of alcohol and substance abuse rehabilitation programs. On August 22, 2018, the Appellate Division of the Superior Court, County of Los Angeles, State of California, upheld the conviction.

18. During a March 7, 2018 IAB interview by Godwin and Alo, Appellant stated that he did not drive while under the influence of alcoholic beverages, that he blacked out before the accident, that he was not involved in a collision due to the consumption of alcoholic beverages, that he did not make contact with Department personnel or report the incident for about four hours after the accident because of his fear, fatigue, and confused state of mind, that Wise stated that the criminal case should not have been filed or that the elements of the crime were not there, and that Wise said former Sheriff McDonnell pressured

the District Attorney's Office to deny Appellant a plea deal. These statements were proven to be false by more credible testimony from Chavez, Percy, and Wise.

19. By letter dated October 5, 2018, the Department notified Appellant that he was discharged from his position of Deputy Sheriff, effective October 8, 2018.

CONCLUSIONS OF LAW

1. The Department maintains that the collateral estoppel applies to preclude litigation of certain facts. The California Supreme Court has described the related doctrines of collateral estoppel and *res judicata* as follows: "As generally understood, '[t]he doctrine of *res judicata* gives certain *conclusive effect* to a *former judgment* in subsequent litigation involving the same controversy.' [Citations.] The doctrine 'has a double aspect.' [Citation]. 'In its primary aspect,' commonly known as claim preclusion, it 'operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.]' [Citation.] 'In its secondary aspect,' commonly known as collateral estoppel, '[t]he prior judgment . . . operates' in a 'second suit . . . based on a different cause of action . . . as an estoppel or conclusive adjudication as to the issues in the second action as were litigated and determined in the first action. [Citation.]' [Citation.] 'The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceedings. [Citations.]' [Citation.] . . . ." (*People v. Barragan* (2004) 32 Cal.4th 236, 251-252; emphasis in original.)

The elements of collateral estoppel are satisfied with respect to the issue of whether Appellant was guilty of violating Vehicle Code sections 23152, subdivision (a), and 20002, subdivision (a). Moreover, the fact that he was convicted establishes all the elements of the crimes of which he was convicted. A necessary element of a conviction of Vehicle Code section 23152, subdivision (a), is that Appellant was under the influence of alcohol and that he drove a vehicle while under the influence. Therefore, Appellant may not challenge the convictions in the instant matter or seek to re-litigate issues necessarily decided in the criminal case.

An issue not litigated or necessarily decided in the criminal court proceedings was whether Appellant should be disciplined for suffering a criminal conviction, which is the second issue certified by the Commission. In addition, the Department's October 5, 2018 letter alleges grounds for discharge in addition to the fact that Appellant suffered the conviction or that he drove a vehicle while intoxicated, such as not wearing a seat belt, not securing his firearm, and making false statements. Accordingly, Appellant is not barred by the doctrine of collateral estoppel from presenting evidence with respect to the appropriate level of discipline or with respect to matters not decided in the criminal case. Appellant was thus permitted to present evidence about his actions and state of mind on September 9 and 10, 2014, even if the evidence had been presented at the criminal trial, as bearing of the allegations not disposed of in the criminal case and, more importantly, as bearing of the appropriate level of discipline.

2. The Department established by a preponderance of the credible evidence the truth of the allegations contained in its letter dated October 5, 2018, as set forth in Finding of Fact numbers 1 through 19.

3. The Department established by a preponderance of the credible evidence that Appellant violated Manual sections 3-01/030.05 and 3-01/030.10, as it pertains to Vehicle Code sections 20002, subdivision (a), and 23152, subdivision (a), because he consumed alcoholic beverages prior to driving his County-issued vehicle, because he drove a County vehicle while under the influence of alcohol, because he was involved in a traffic collision that resulted in significant damage to a County vehicle while driving under the influence of alcoholic beverages, because he was arrested for driving under the influence of alcoholic beverages and for engaging in a hit-and-run collision, and because he was convicted of the charged crimes, as set forth in Finding of Fact numbers 2, 3, 5 through 8, 16, and 17.

4. The Department established by a preponderance of the credible evidence that Appellant violated Manual sections 3-01/030.05, 3-01/090.10, 3-01/090.07, and 3-01/040.90 because he consumed alcoholic beverages prior to driving his County-issued vehicle, because he drove a County vehicle while under the influence of alcoholic beverages, because he was involved in a traffic collision that resulted in significant damage to a County vehicle while driving under the influence of alcoholic beverages, because he was not wearing his seatbelt at the time of the collision, and because he failed to promptly report the collision, as set forth in Finding of Fact numbers 2, 3, and 5 through 13.

5. The Department established by a preponderance of the credible evidence that Appellant violated Manual section 3-01/025.45 because he failed to exercise reasonable care or control of his firearm, as set forth in Finding of Fact number 4.

6. The Department established by a preponderance of the credible evidence that Appellant violated Manual section 3-01/090.10, as it pertains to Manual sections 3-

01/040.69, 3-01/040.70, and 3-01/040.75, because he made false statements to IAB investigators, as set forth in Finding of Fact number 18.

7. The Department established by a preponderance of the credible evidence that discharge is appropriate.

RECOMMENDATION

It is respectfully recommended that the Commission adopt the Findings of Fact and Conclusions of Law and uphold Appellant's discharge.

DATED: 8/24/20

Samuel D. Reyes
Hearing Officer



OFFICE OF THE SHERIFF



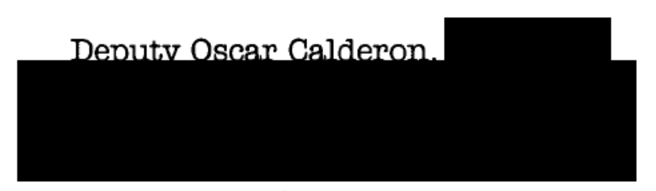
COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

October 5, 2018

Date of Department Hire 09/21/1998



Deputy Oscar Calderon, [redacted]

Dear Deputy Calderon:

LETTER OF IMPOSITION

On July 2, 2018, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under IAB File Number IV2365542. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on October 8, 2018.

An investigation under IAB File Number IV2365542, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 23152(a) California Vehicle Code (CVC), Driving Under the Influence of Alcohol or Drugs

and/or 20002(a) CVC, Hit and Run Traffic Collision; on or about or between September 9 and 10, 2014; you violated State law, and/or failed to maintain a level of moral conduct in keeping with the highest standards of law enforcement personnel, and/or engaged in behavior which caused the Department to be brought into disrepute, and/or demonstrated a pattern of undesirable and/or unprofessional behavior which was criminal in nature, as evidenced by, but not limited to:

a. driving your issued County vehicle under the influence of alcohol while not assigned to any undercover operation(s); and/or,

b. being involved in a traffic collision involving your issued County vehicle while under the influence of alcohol and causing a total loss of such vehicle due to the damage caused; and/or,

c. admitting to drinking alcohol prior to driving; and/or,

d. being arrested for and/or charged with 23152(a) California Vehicle Code (CVC), Driving Under the Influence of Alcohol or Drugs and/or 20002(a) CVC, Hit and Run Traffic Collision, (Los Angeles County Sheriff's Department Report Numbers 914-06982-1514-250 and 914-00063-2003-441); and/or,

e. being found guilty after a Jury Trial on March 24, 2017 to 23152(a) California Vehicle Code (CVC), Driving Under the Influence of Alcohol or Drugs; and/or 20002(a) CVC, Hit and Run Traffic Collision, and sentenced on July 7, 2017, to 36 months summary probation in addition to numerous court fees, fines, and court-mandated classes.

2. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/090.10, Operation of Vehicles; and/or 3-01/090.07,

Use of Seatbelts; and/or 3-01/040.90 Reporting Information; on or about or between September 9 and 10, 2014; you failed in keeping with the highest standards of law enforcement personnel, and/or engaged in behavior which caused the Department to be brought into disrepute, and/or demonstrated a pattern of undesirable and/or unprofessional behavior which was criminal in nature, as evidenced by, but not limited to:

a. driving your issued County vehicle under the influence of alcohol while not assigned to any undercover operation(s); and/or,

b. driving your issued County vehicle without using the seatbelt; and/or,

c. being involved in a traffic collision involving your issued County vehicle while under the influence of alcohol and causing a total loss of such vehicle due to the damage caused; and/or,

d. failing to promptly report being involved in a traffic collision involving your issued County vehicle causing significant damage to city property and the County vehicle itself; and/or

e. admitting to drinking alcohol prior to driving.

3. That in violation of Manual of Policy and Procedures Section 3-01/025.45, Safety of Firearms, on or about or between September 9 and 10, 2014, you were unable to exercise reasonable care and/or control of a firearm in your possession, as evidenced by, but not limited to:

a. consuming an intoxicating substance to the point where you were unable to or could not exercise reasonable care and/or control of your firearm; and/or,

b. stating you were unable to "remember" where you placed your firearm; and/or,

c. placing your firearm in an unlocked desk drawer, accessible to unauthorized personnel.

4. That in violation of Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements During Departmental Internal Investigations, on or about March 7, 2018, you provided false, and/or misleading, and/or incomplete, and/or improper statements during your recorded interview regarding your actions on or about or between September 9 and 10, 2014; as evidenced, but not limited to:

a. stating Deputy District Attorney Wise told him (Subject Calderon), Sheriff McDonnell called District Attorney Jackie Lacey and told her, "Oh, by the way, don't offer Oscar any... don't make him any offers. Take away any offers", and/or words to that affect, when such comments were never made by Deputy District Attorney Wise; and/or,

b. stating Deputy District Attorney Wise told him the case should not have been filed and/or the elements of the crime were not there when such comments were never made by Deputy District Attorney Wise.

5. That in violation of Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements

During Departmental Internal Investigations, on or about March 7, 2018, you provided false, and/or misleading, and/or incomplete statements during your recorded interview regarding your actions on or about or between September 9 and 10, 2014; as evidenced, but not limited to:

a. providing misleading, and/or inaccurate, and/or false, and/or improper statements as to your traffic collision and/or whereabouts on or about or between September 9 and 10, 2014; and/or,

b. stating you did not report the traffic collision or take other appropriate action because you "blacked out" and/or "passed out" while operating your County-issued motor vehicle before you were involved in a collision, yet you were able to call your girlfriend, Witness [redacted] hours before you called a supervisor; and/or,

c. stating you did not drive your vehicle while under the influence of alcohol and was not involved in a traffic collision due to being under the influence of alcohol; and/or,

d. claiming you were involved in a traffic collision accident and did not immediately report it because you were "fatigued" and "working a lot," you got scared and ran northbound on Rosemead Boulevard to Pasadena for approximately 6.9 miles, not knowing if you were in a "nightmare or in reality."

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet, which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 500 W. Temple Street, Room 522, Los Angeles, California 90012.

If you have any questions, you may contact Jennifer B. Deadmond, of Internal Affairs Bureau, at [redacted]

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

KELLEY S. FRASER, CHIEF
SOUTH PATROL DIVISION

KSF:JBD:jd
(Professional Standards and Training Division – Internal Affairs Bureau)

IAB FILE NO. IV2365542

Attachments

c: Kelley S. Fraser, Chief, South Patrol Division
John M. Roberts, Captain, Operation Safe Streets Bureau/Unit Personnel File
Kimberly L. Unland, Captain, Personnel Administration Bureau
Doreen Garcia, Administrative Services Manager III, Pay, Leaves, and Records Units
Jennifer B. Deadmond, Operations Assistant I, Internal Affairs Bureau
Vince Vasquez, Operations Assistant I, Advocacy Unit



OFFICE OF THE SHERIFF



COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

July 2, 2018

Sergeant Gerardo Lucio, #[redacted]
[redacted]

Dear Sergeant Lucio:

LETTER OF INTENT

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Sergeant, Item No. 2717A, with this Department, effective the close of business July 31, 2018.

An investigation under IAB File Number IV2365542, conducted by Internal Affairs Bureau, coupled with your own statements, have established the following:

1. That in violation of the Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or or 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to Failure to Carry Out Supervisory, Managerial or Executive Duties and Responsibilities Adequately and Promptly, and/or 2-02/080.00, Sergeants; and/or 3-01/050.10, Performance to Standards; on or about or between September 9 and 10, 2014; you failed to perform to the standards established for your rank of Sergeant, when you failed to ensure your subordinates adhered to established orders and policies; and/or failed to perform your duties in a manner which established and maintained the highest standard of efficiency in carrying out the

functions and objectives of the Department, as evidenced by, but not limited to:

a. failing to make proper and prompt notifications to your managers relating to an incident involving your subordinate; and/or,

b. failing to take appropriate corrective measures consistent with your rank and authority; and/or,

c. failing to demonstrate a thorough understanding of emergency procedures and management of officer involved incidents; and/or,

d. failing to be a positive role model and provide leadership when you allowed non-authorized persons to enter and loiter for non-work related purposes in the Pico Rivera OSS Office after consuming alcoholic beverages.

2. That in violation of the Manual of Policy and Procedures Sections 3-01/040.45, Safeguarding Money, Property, and Evidence, on or about or between September 9 and 10, 2014; you failed to maintain the highest standards of law enforcement personnel, and/or engaged in behavior which caused the Department to be brought into disrepute, and/or demonstrated a pattern of undesirable and/or unprofessional behavior, as evidenced by, but not limited to:

a. failing to properly secure and book or cause to be booked, Deputy Calderon's personal cell phone as evidence for a hit and run traffic collision investigation (Los Angeles County Sheriff's Department Report Numbers 914-06982-1514-250 and 914-00063-2003-441).

3. That in violation of the Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/030.37, Unnecessary/Inappropriate Interference in an Investigation; on or about or between September 9 and 10, 2014; you knowingly interfered and/or unnecessarily interjected yourself beyond the scope of your responsibilities into a Department criminal investigation; as evidenced by, but not limited to:

   a. providing misleading, incomplete and/or inaccurate, and/or false, and/or improper statements to your managers as to the events of September 9 and 10, 2014; and/or,

   b. sending Deputy [redacted] home from the Pico Rivera OSS office; and/or

   c. discouraging Detective [redacted] from speaking with ICIB; and/or

   d. delaying notifications relating to pertinent information into the investigation involving a criminal hit and run investigation; and/or

   e. instructing Detective [redacted] to return Deputy Calderon's personal cellphone recovered from the scene of the collision to him.

4. That in violation of the Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/005.10, Responsibility for Documentation; on or about or between September 9 and 10, 2014, you omitted and/or failed to provide complete information, when you failed to fully and accurately record your actions in your Supplemental Report.

5. That in violation of the Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements During Departmental Internal Investigations, on or about March 21, 2018, you provided false, and/or misleading, and/or incomplete statements during your recorded interview and/or during your conversation with then-Captain Rivero on September 10, 2014, regarding your actions on or about or between September 9 and 10, 2014; as evidenced, but not limited to:

   a. stating you told Lieutenant [redacted] that Deputy Calderon was drinking at Chili's prior to a traffic collision; and/or,

   b. stating or suggesting to then-Captain Rivero you did not know if Deputy Calderon was drinking prior to a traffic collision; and/or words to that affect; and/or,

   c. stating or suggesting to then-Captain Rivero you did not know Deputy Calderon's whereabouts prior to the collision and/or did not know who you were with; and/or

   d. denying during your recorded interview that you and your subordinates went to the OSS office for water and snacks because they did not want to drink and drive after having told then-Captain Rivero that they did so during your conversation with him on September 10, 2014.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet, which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Kelley S. Fraser, on July 31, 2018 at 1400 hours, in her office, which is located at 211 West Temple Street, Los Angeles, California 90012. If you are unable to appear at the scheduled time and wish to schedule some other time prior to July 31, 2018, for your oral response, please call Chief Fraser's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Fraser's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Fraser's office no later than July 31, 2018.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave, which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Josie S. Woolum, Captain
Internal Affairs Bureau

JSW:JMR:jr
(Professional Standards and Training Division – Internal Affairs Bureau)

IAB FILE NO. IV2365542

Attachments

c: Kelley S. Fraser, Chief, South Patrol Division
Georgette Burgess, Departmental Employee Relations Representative, Employee Relations Unit
Tamora Johnson, Operations Assistant I, Internal Affairs Bureau
Vince Vasquez, Operations Assistant I, Advocacy Unit



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

February 16, 2022

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***GERARDO LUCIO*** *for a hearing on his* ***discharge****, effective September 28, 2018, from the position of Sergeant, Sheriff's Department,* **Case No. 18-201**.

The Civil Service Commission, at its meeting held on January 26, 2022, approved findings in the above-entitled case. The petitioner's objections were overruled.

Since a copy of these findings have already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Craig M. Hoetger
Interim Executive Director

Enclosure

c: Gerardo Lucio
Stephen Chulak
Vincent McGowan
David Beauvais

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the ***discharge****, effective September 28, 2018, from the position of Sergeant, Sheriff's Department, of* **GERARDO LUCIO** **(Case No. 18-201)**	ORDER OF THE CIVIL SERVICE COMMISSION

On January 26, 2022, the Civil Service Commission of the County of Los Angeles overruled the petitioner's objections. The Commission adopted as its final decision the findings and recommendation of the Hearing Officer, David Beauvais, to sustain the department.

Dated this 16th day of February, 2022.

JOHN DONNER, President

PERCY DURAN III, Member

NAOMI NIGHTINGALE, Member

HEIDI SEGAL, Member

DICKRAN TEVRIZIAN, Member

LOS ANGELES COUNTY
CIVIL SERVICE COMMISSION

In the Matter of the Appeal of
Gerardo Lucio, Appellant
And
Los Angeles County Sheriff's Department Respondent
CASE #: 18-201

FINDING OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDED DECISION

AUG - 6 2021

RECEIVED

LOS ANGELES COUNTY
CIVIL SERVICE COMMISSION

APPEARANCES:

For the Appellant: Stephen Chulak, Stone Busailah, LLP

For the Respondent: Vincent McGowan, Hausman & Sosa, LLP

BEFORE: David P. Beauvais, Hearing Officer

INTRODUCTION

The above captioned matter was heard by David P. Beauvais, Hearing Officer for the Los Angeles County Civil Service Commission. The hearing was conducted on July 17, 18, 19, September 26, November 25, 26, 2019, January 10, 14, 15, March 6, 12, and November 17, 2020. The Appellant introduced 15 exhibits, which were made part of the record and the Respondent introduced 76 exhibits that were admitted into evidence. An additional hearing day was scheduled for January 16, 2021 to hear testimony

on additional certified issues, but the Hearing Office determined testimony was not necessary as a decision could be made on both issues based on briefs submitted by the parties. Following the hearing, the parties submitted written argument on the merits, which were received by the Hearing Officer on May 11, 2021.

ISSUE

On December 5, 2018, the Commission defined the issues in this matter as:

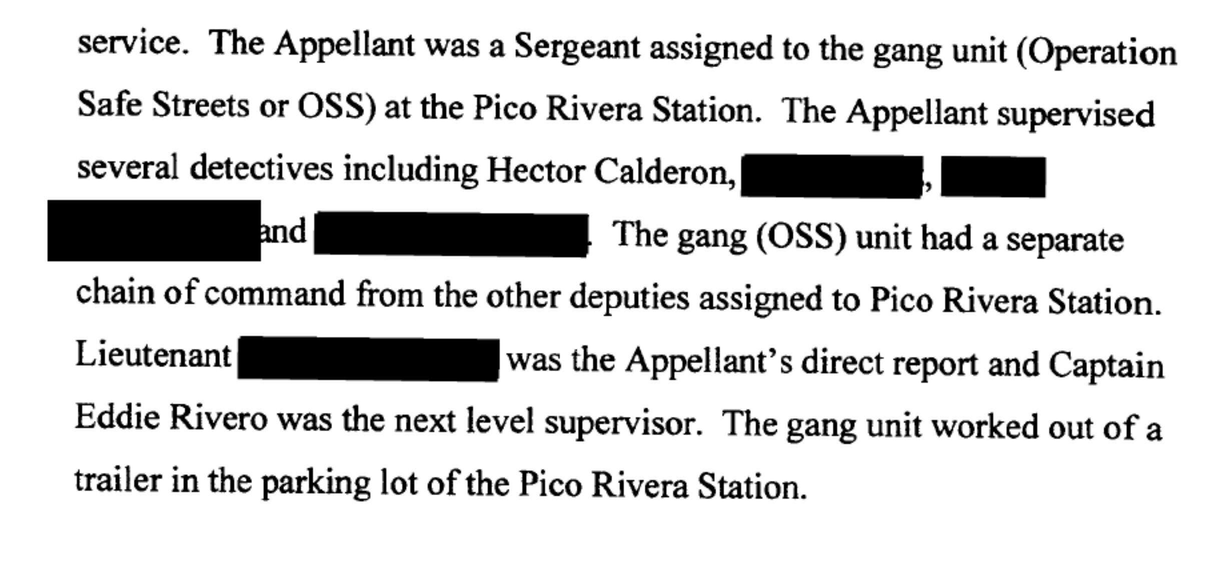
1. Are the allegations contained in the Department's letter of October 1, 2018 true?
2. If any or all are true, is the discipline appropriate?

On October 14, 2020, the Commission certified two additional issues:

- Did the Department violate the petitioners pre-deprivation due process (Skelly) rights as alleged?
- If so, what is the appropriate remedy?
- Was there a violation of the Public Safety Officer Procedural Bill of Rights Act, Government Code Section 3304(d)?
- If so, what is the appropriate remedy?

BACKGROUND

The Appellant was hired on December 27, 1994 and at the time of the incident leading to the disciplinary issue at bar had almost 20 years of



service. The Appellant was a Sergeant assigned to the gang unit (Operation Safe Streets or OSS) at the Pico Rivera Station. The Appellant supervised several detectives including Hector Calderon, [redacted], [redacted] and [redacted]. The gang (OSS) unit had a separate chain of command from the other deputies assigned to Pico Rivera Station. Lieutenant [redacted] was the Appellant's direct report and Captain Eddie Rivero was the next level supervisor. The gang unit worked out of a trailer in the parking lot of the Pico Rivera Station.

On September 9, 2014, the Appellant, [redacted] and Calderon drove from the OSS trailer to Chili's restaurant, where they met three female civilians. They arrived at the restaurant shortly after 9:00 p.m. Detective [redacted] had already gone home for the day, and Detective [redacted] stayed in the trailer to finish some paperwork. The Appellant, the two detectives and three females drank beer and hard alcohol for approximately two hours. No food was consumed. They closed out their bill at 11:13 p.m. and returned to the OSS trailer. On the way back to the trailer they stopped at a 7-11 store to pick up some snacks. Shortly after the six arrived at the OSS trailer Detective [redacted] left and drove home.

At approximately 12:15 a.m. Detective Calderon left the OSS trailer, driving his assigned department vehicle. Shortly thereafter Calderon was involved in a single car accident on Rosemead Boulevard. The accident damaged a section of wrought iron fencing in the median and badly damaged the county vehicle. Calderon, who was injured, fled the scene of the accident, later abandoning the damaged county vehicle.

Responding Sheriff's deputies found a license plate at the scene and determined a department vehicle was involved. The Pico Rivera Station Watch Commander, Lieutenant [redacted] instructed the Appellant to determine if the vehicle was an OSS vehicle. The Appellant checked his roster and determined it was assigned to Calderon. Lieutenant [redacted] and Field Sergeant Nichiporuk drove to the scene of the accident. Among the objects recovered at the scene was one of Calderon's cell phones. When Lieutenant [redacted] returned to the station he had a brief conversation with the Appellant. During the conversation the Appellant told [redacted] he had been out with Calderon at Chili's restaurant.[1] Lieutenant [redacted] also instructed the Appellant to call his immediate supervisor, Lieutenant [redacted]

The exact time of the conversation described above is uncertain but based on witness statements and phone records it was likely between 1:10 and 1:30 a.m. Following the conversation with Lt. [redacted] the Appellant made several attempts to contact Calderon. This was also at Lt. [redacted] direction. The Appellant also called Detective [redacted], enlisting him in the search for Calderon. The Appellant first notified Lt. [redacted] of the incident at 1:43 a.m. Lt. [redacted] arrived at Pico Rivera Station at approximately 2:30 to 2:45 a.m. After meeting with the Appellant and Lt. [redacted] Lt. [redacted] instructed the Appellant to go home.

Lt. [redacted] and Detective [redacted] drove to Baldwin Park where one of Calderon's [redacted] lived. Detective [redacted] made contact with the

[1] There is some dispute as to exactly what was said and if the Appellant told Lt. [redacted] they had been drinking at Chilis.

[redacted], but Calderon was not at the Baldwin Park residence. Phone records indicate Ms. [redacted] called Calderon twice, at 4:30 and 4:31 a.m. Detective [redacted] dropped Lt. [redacted] back at the Pico Rivera Station and continued to search for Calderon. Shortly thereafter, at 4:34 a.m. Calderon called the Appellant. Phone records indicate the call between Calderon and the Appellant lasted about five minutes. During the call the Appellant told Calderon to contact Detective [redacted]. Phone records indicate Calderon called [redacted] at 4:39 a.m. At that point Lopez and Lt. [redacted] were likely in route back to Pico Rivera Station. At 5:11 a.m. Detective [redacted] made personal contact with Calderon at the location where Calderon had abandoned his vehicle, Rosemead and Klingerman. Phone records indicate [redacted] and [redacted] were in telephone contact several times between 4:39 (first phone contact) and 5:11 a.m. (first personal contact). Detective [redacted] left Calderon and called Lt. [redacted] at 5:33 a.m. At 5:49 a.m. the Fire Department arrived and Calderon was treated for his injuries. Calderon was subsequently transported to a hospital at 6:03 a.m. Detective [redacted] and Lt. [redacted] accompanied the ambulance to the hospital.

At 6:45 a.m. Captain Rivero called the Appellant. The two discussed the incident for approximately eight minutes. While there is some disagreement as to exactly what was said, the Appellant did not disclose he had been at Chilis restaurant with Calderon prior to the accident. Following the conversation with Captain Rivero the Appellant called Lt. [redacted] who was still at the hospital. During the call the Appellant told [redacted] he had been drinking with Calderon and had not disclosed this to Captain Rivero

during their phone conversation[2]. Lt. [redacted] advised the Appellant to call Rivero back and tell him the truth. The Appellant did call Captain Rivero back, but not immediately. Phone records indicate he did not contact Captain Rivero until 9:14 a.m. During the second phone conversation with Captain Rivero the Appellant fully disclosed he had been with Calderon for several hours prior to the accident and that he, Calderon and Valenzuela had been drinking. Captain Rivero ordered the Appellant to complete a supplemental report, which the Appellant completed on September 16, 2014.

A criminal investigation of the incident was initiated on September 10, 2014. Sergeant Gary Harman and Sergeant Ray Moeller. The initial subjects of the investigation were Detectives Calderon and Lopez, the Appellant, Lt. [redacted] and Lt. [redacted] On June 8, 2015 the investigation was submitted to the Los Angeles County District Attorney's Office for consideration of filing charges. On September 8, 2015, misdemeanor charges of Driving Under the Influence (DUI) and Hit and Run were filed against Detective Calderon. On March 24, 2017, Calderon was found guilty of the charges after a jury trial. On August 24, 2017, The District Attorney's office declined to file any criminal charges against the Appellant, Detective [redacted] or Lt. [redacted]

Following the resolution of the criminal charges the investigation was handed off from the ICIB to the Internal Affairs Bureau (IAB). The IAB investigation was conducted by Sergeant Brian Godwin. The IAB investigation involved numerous additional interviews and obtaining

[2] There is some dispute regarding what was said during this conversation.

additional evidence. On June 26, 2018, Chief Kelley S. Fraser determined the Appellant should be discharged. A Notice of Intent to Discharge was issued to the Appellant on July 2, 2018. A written response to the Intent Letter dated August 20, 2018, was submitted by the Appellant's representative. A Notice of Discharge was issued to the Appellant on October 1, 2018. The Appellant timely appealed the discharge to the Los Angeles County Civil Service Commission and the appeal was granted on December 5, 2018. The Hearing Officer was assigned to hear this case on February 7, 2019. Additional certified issues were granted on October 14, 2020.

EXHIBITS

Department Exhibits: See Attachment "A"

Appellant Exhibits: See Attachment "B"

POSITION OF THE PARTIES

Department

The Department argues the preponderance of evidence in this case establishes the Appellant failed to exercise good judgement, obstructed the criminal investigation of his subordinate employee, failed to timely notify his immediate superior of Detective Calderon's hit and run accident, failed to notify his and immediate supervisor and second level supervisor of key facts that impeded the subsequent investigation, omitted material facts from

his written report, and was untruthful in multiple responses during his IAB interview.

Further, the Department argues the threshold issues raised by the Appellant during the hearing process and certified by the Commission are without merit and should be dismissed. The Department argues the Skelly issue is without merit. The Department points out there is no procedure for "discovery" under civil service rules, and that in any case, the investigator's log is not a document that was in any way relied upon by any official at any stage of the administrative process and thus is not a document the Department was or is obligated to disclose to the appellant. The Department also contends the POBRA issue raised by the Appellant is without merit. The Department contends case law developed through California appellate courts fully supports their position that the Department correctly calculated the tolling period for the Appellant in this case.

Regarding the merits of the case, the Department argues testimony and documentary evidence establish the following:

- A lack of good judgment in joining subordinate employees at Chili's and drinking to excess.
- A lack of good judgment in allowing civilians to enter the OSS trailer for an extended period.
- A lack of good judgment in allowing Detectives Calderon and [redacted] to drive county vehicles while impaired.
- Failing to book Calderon's phone into evidence.
- Failing to timely notify his immediate superior of Calderon's accident.

- Failing to fully apprise Lt. [redacted] that he had been drinking with Calderon prior to the vehicle accident.
- Failing to apprise Lt. [redacted] that he had been drinking with Calderon upon [redacted] arrival at Pico Rivera Station.
- Failing to notify his immediate supervisor that Calderon called him at 4:34 a.m.
- Failing to fully apprise Captain Rivero that he had been drinking with Calderon at Chilis prior to the accident during their 6;45 a.m. telephone call.
- Failing to promptly correct his omission to Captain Rivero.
- Omitting key facts and making misstatements in his supplemental report.
- Obstructing the investigation by telling Detective [redacted] he should not agree to an interview with ICIB investigators.
- Making untruthful statements during his IAB interview.

The Department contends the totality of the evidence should convince the Hearing Officer that the Appellant lacks the good judgment, honesty and integrity to continue his employment with the Department and that discharge is the appropriate level of discipline in this case.

Appellant

The Appellant argues there is no cause for discipline in this case and the discipline should be overturned. The Appellant should be returned to work as a Sergeant with the Department. The Appellant points to a discipline free

record of almost twenty (20) years, with numerous citations and awards. The Appellant argues that at no time was he in charge of the investigation, as the primary investigative role was within the Pico Rivera Station chain of command, not OSS. The Appellant contends he assisted in the investigation as directed by Lt. [redacted] and apprised [redacted] he had been out with Calderon prior to the accident. Appellant asserts it was [redacted] responsibility as Watch Commander to brief Lt. [redacted] and Captain Rivero upon each's arrival at Pico Rivera Station. Appellant asserts there is no evidence that he knowingly impeded or obstructed the investigation as it unfolded the morning of September 10, 2014.

The Appellant also denies falsifying his supplemental report or giving false or misleading answers to investigators during his IAB interview. The Appellant points out that said interview was conducted several years after the incident itself and what were characterized as false responses were simply the result of the extraordinary lapse of time between the incident and the interview. Any omissions in his supplemental report were inadvertent and did not negatively impact the investigation.

Regarding the threshold Skelly issue, the Appellant argues the Investigator's log is a key piece of evidence that proves the Appellant was not an initially a suspect. It is exculpatory evidence that was deliberately withheld by the Department. The Appellant cites *San Diego Police Officers Assn. v. City of San Diego (98 Cal. App. 4th)* as authority and precedent in this regard.

Regarding the threshold POBRA issue, the Appellant argues the Investigator's log establishes the Appellant was not considered a subject of a

criminal investigation until March 17, 2017, well after the one-year period which would have expired on September 10, 2015. The Appellant argues the main subject of the criminal investigation was always Detective Calderon, and he was the only person indicted, tried and convicted of a crime.

DISCUSSION

Skelly Issue

Turning first to the Skelly issue, the Appellant argues his due process rights were violated when the Department failed to turn over the investigators log. The Appellant argues Government code 3303(g) specifically provides that a public safety officer is entitled to *"any notes, reports or complaints made by investigators or other persons except those which are deemed by the investigating agency to be confidential."* The Appellant further relies on *San Diego Police Officers Assn. v. City of San Diego (98 Cal. App. 4th).* The Appellant also cites *Skelly,* noting a permanent employee with a vested property interest in his position is deprived of due process when he was not afforded all the "materials upon which the action was based."

In rebuttal, the Department submits that the investigator's log is simply a summary of events that occurred during the investigation. The Department argues that a disciplinary decision is based on the facts and evidence developed during an investigation and not on an index. The Department cites several cases to support their position.

First, the Appellant's reliance on *San Diego Police Officers Assn. v. City of San Diego* as the basis for the alleged violation is misplaced. The issue in that case was quite clearly defined by the Appellate Court on review; *"SDPOA filed this action for writ of mandate contending that section 3303, subdivision (g) fn2 compelled City to provide the accused officer with any raw notes and tape recordings of witness interviews taken as part of the investigation. Fn3 City opposed the action, arguing that because section 3303, subdivision (g) lists several specific items of materials to be provided an officer under disciplinary investigation, any items not listed by that subdivision need not be provided. The court construed the terms "reports" and "complaints" in section 3303, subdivision (g) to include the raw notes and tape-recorded interviews of witnesses and issued the requested writ of mandate."* While the Appellate Court clearly found that "raw notes" and "tape recorded interviews" were materials an accused officer was entitled to, they did not venture beyond those items in their affirmation of the lower court decision. Appellant argues he was not only entitled to the final written report of the investigating officer but also entitled to all notes, raw notes and access to underlying data gathered as part of the administrative investigation. Since the Investigator's Log notes were prepared as part of the administrative investigation, he is entitled to the investigator's log.

But the San Diego decision does not refer to "underlying data" nor was that term used or discussed at the District Court level or in the Appellate review. In fact, the San Diego Police Officers Association was quite specific in the type of materials they were requesting, ie, investigator notes and recordings of interviews and the court limited their decision to those materials.

Second, as noted in Appellant's brief, *Skelly* established an Appellant is entitled to all the "materials upon which the action is based." The question posed here then is whether the Investigators log is a document or material upon which the disciplinary action was based. I find it was not. As noted in the Department's brief, the disciplinary action in this case generated hundreds of documents from the ICIB and IAB investigations, including numerous reports, interviews, statements and records. All this material was made available to the Appellant and his representatives. Moreover, there is no proof the investigator's log was reviewed, analyzed or in any manner considered either by the proposing official, the deciding official or the panel members that reviewed the case. Simply put, the Appellant has failed to establish the investigator's log is evidence in the commonly accepted meaning of the word or that it was in any way material in considering the disciplinary action in this case.

<u>POBRA Issue</u>

Appellant also argues the case is time barred and the discipline was untimely issued. In their brief Appellant contends, based on the ICIB supplemental report, that Appellant was not considered a suspect until March 17, 2017, well after the beginning of the criminal investigation on September 10, 2014. The Appellant also offers several alternative dates when tolling could or should have ended, all of which would result in an untimely imposition of the Notice of Intent on July 2, 2018.

The Department argues that applicable case law supports their position that the tolling did not end until the Los Angeles County District Attorney made

a final written decision declining criminal charges for the Appellant, Detective [redacted] and Lieutenant [redacted] on August 24, 2017. I concur with the Department's position.

First, there is no question the ICIB investigation was initiated on September 10, 2014 at the request of Executive Officer Neal Tyler. Sergeant (now Lieutenant) Gary Harman was the lead investigator throughout. There is also no question that Calderon was the initial focus of the investigation. However, Lt. Harman became aware the Appellant and Calderon had been together drinking prior to Calderon's accident during the briefing with Lt. [redacted] the morning of September 10, 2014 (App. Ex. E, pgs. 11, 12, 20, 21, 22). Moreover, Captain Rivero called ICIB Captain Kusch at approximately 9:30 a.m. on September 10, 2014 and advised him (Kusch) that Lucio and Calderon had been drinking at a Chilis' restaurant prior to the vehicle accident. That knowledge certainly raised a question of culpability on the part of the Appellant. Additionally, Lt. Harman attempted to contact the Appellant on September 18, 2014 via email to discuss Appellant's supplemental report. Appellant's attorney of record at that time responded via email, telling Lt. Harman Appellant was declining to participate in the investigation (Dept. Ex. 7, pgs. 46, 47). Obviously, the Appellant understood within a week of the incident he was a possible subject in the criminal investigation.

Second, applicable California state case law supports the Department's position. The Department cites Parra v. City and County of San Francisco Police Commission (2013) 213 Cal. App. 4th 977. That case involved multiple police officers, some of whom were accused of obstructing and

covering up a criminal investigation. The Appellate Court ruled; "*Section 3304(d)(1) applies "[i]f the act, omission or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution." Contrary to Lieutenant Parra's argument, it is the "act, omission, or other allegation" which must be the subject of the prosecution, and any objective reading of the record reflects that the criminal investigation encompassed the misconduct of all officers who were involved in connection with the incident-including Lieutenant Parra. In the words of the Commission: "the criminal investigation included all of the conduct, indeed the very allegations at issue in these administrative proceedings." We conclude that Judge Warren correctly concluded that the limitation period was tolled by the criminal investigation, the effect of which was that the one-year limitation period would not expire until April 3, 2004.*"

The Department also cites Richardson v. City and County of San Francisco Police Commission (2013) 214 Cal. App. 4th 671, rejecting the argument that an investigation must be "actual and active"; *"Richardson's proposal would put police departments and the courts in the position of having to determine whether various acts—such as a district attorney's review of documents, internal deliberations, or assessments whether to proceed with a prosecution—constitute a sufficiently 'active' investigation. And her theory would similarly require the Department and the courts to figure out what it means for a criminal investigation to move quickly enough—whether the investigators much take 'active' steps daily or monthly or at some other frequency to implicate the tolling provision. In short, a police department considering disciplinary action would have no way to determine reliably whether a particular level of investigatory activity is adequate to trigger*

tolling under section 3304(d)(2)*." In sum, Richardson's proposed standard is untenable."*

Lastly, the Department cites Bacilio v. City of Los Angeles (2018) 28 Cal. App. 5th 717, which conclusively resolves the issue of when tolling ends in a criminal investigation; *"A criminal investigation is no longer pending when a final determination not to prosecute and to close the criminal investigation is made. Interim decisions short of a final determination will not stop the tolling."*

Taken together, these cases provide that (1) it is the conduct of the officers that is being investigated and subject to prosecution, (2) the tolling period continues so long as there is a pending investigation into that conduct and (3) the investigation is no longer pending only when a final determination is made by the prosecuting office. In the case at bar the facts establish the criminal investigation started on September 10, 2014 when the investigation was assigned to Lt. Harman and concluded on August 24, 2017, when the Los Angeles County District Attorney declined criminal prosecution of the Appellant, [redacted] and [redacted]

Merits of the Case

After a thorough review of the evidence in this case, including testimony of the witnesses, exhibits, and argument submitted in written briefs, I have concluded the Department established by a preponderance of evidence that the Appellant violated the Department's policy on some charges, but not on others. The Notice of Intent and subsequent Discharge letter contain five (5)

charges; all but one charge delineates specific acts/violations. The totality of the charges against the Appellant were synopsized above in the position of the parties. My reasoning follows.

<u>The Appellant demonstrated a lack of good judgment in joining subordinates at Chili's and drinking to excess.</u>

The Appellant demonstrated a lack of good judgment by drinking excessively at Chilis restaurant. First, while there is no prohibition against socializing with subordinates in an off-duty status, there is no doubt [redacted], Calderon and the Appellant drank to the point of impairment, and probably over the legal limit of .08. The testimony of all three men indicated the women were drinking beer and clamato juice. The bar bill obtained by investigators confirms two Dos Equis and two Modelo beers and four Clamato's on the bill. There are also nine bud light beers, six Fireballs (a flavored whisky), three Bacardi Rums, a Jack Daniels bourbon, three Johnny Walker Black scotches and a Captain Morgan Rum.

At hearing the Appellant admitted drinking one beer, three Johnny Walker Black's with coke and one Fireball. Valenzuela and Calderon testified they only drank beer and one Fireball. None of the men remember the women drinking anything other than beer and Clamato juice and one Fireball. IAB investigators interviewed the three women and the waitress at Chilis. The women confirmed they each consumed two beers and a Fireball. Nine of the beers (Bud-Light) were twenty-two (22) ounce drafts.[3] Regardless of who

[3] For reference, that is equivalent to 16 and a half 12-ounce bottles of beer.

drank exactly what, the party of six consumed thirteen beers and fourteen drinks of hard liquor in less than two hours. Moreover, the fact [redacted] and Calderon stopped for water and snacks in route from Chilis to the OSS trailer indicates the men knew they were impaired and needed time and something to eat to help sober up. When interviewed, two of the women stated the reason for going to the OSS trailer was to sober up. The Appellant testified he only returned to the OSS trailer to pick up his weapon and some paperwork, yet he also stayed in the OSS trailer for over an hour. Moreover, the Appellant told Captain Rivera the reason they returned to the OSS trailer was because they had been drinking and wanted some time to elapse before they drove anywhere (11-21-19 tr. Pg. 37/38). The fact that Calderon left the OSS trailer at about 12:15 a.m. and had a single car collision just minutes later is also compelling evidence of impairment.

The Appellant demonstrated a lack of good judgment in allowing civilians to enter the OSS trailer for an extended period.

The Department did not establish there was an existing policy restricting civilians entering the OSS trailer, but as a matter of best practices and common sense, this was also a lack of good judgment, albeit a minor one. Although the Appellant, [redacted] and Calderon all testified there was nothing sensitive or confidential left out in the open in the trailer, none of them knew for certain what might be exposed around the trailer. Although [redacted] knew one of the women, the detectives did not know the other two women or what possible affiliations they might have with gang members. Simply put, while not a serious policy violation, bringing the

women back to the OSS trailer was a bad idea. There were options available, such as calling for an Uber ride to take the women home.

The Appellant demonstrated a lack of good judgment in allowing Detectives Calderon and [redacted] to drive county vehicles while impaired.

As discussed above, there is persuasive evidence that the Appellant, Calderon and [redacted] were impaired at the time they left the Chilis restaurant. Appellant's attorney argued the Appellant had no way of knowing either [redacted] or Calderon were driving their county vehicles, but that is simply not true. During his IAB interview the Appellant stated that he kept a roster of vehicles assigned to each detective, that they parked at various stations or locations near their homes and that he was aware of each location. The Appellants and detectives knew they would be drinking alcohol at Chilis. They knew they would be operating their county vehicles after drinking. As a supervisor, the Appellant bears the primary responsibility to assure the safety of his subordinates and the security of their vehicles.

The Appellant did not violate policy when he did not book Calderon's phone into evidence and subsequently gave the phone to Detective [redacted] to return to Calderon.

Testimony established that Pico Rivera Station operations was the primary investigative unit following Calderon's hit and run accident on Rosemead Blvd. Pico Rivera patrol responded to the accident and Deputy Perez was the on-scene investigator at the Rosemead Blvd. location. Field Sergeant

Nichiporuk was also at the accident scene and was the senior officer. Deputy Perez found the cell phone and gave it to Nichiporuk. Sgt. Nichiporuk testified he received a call on the cell phone from Detective [redacted], so he knew for sure the phone was Calderon's. Sgt. Nichiporuk testified the phone was locked and the data could not be accessed. Sgt. Nichiporuk testified he did not consider the phone to be evidence and gave it to the Appellant. He also testified that the data could be obtained via subpoena if necessary, as part of the criminal investigation.

The Appellant's testimony was consistent with Sgt. Nichiporuk on this point. The Appellant testified he gave the phone to Detective [redacted] with instructions to return it to Calderon when he was located. Several witnesses, including Lt. Harman and Eddie Rivero testified that they thought the phone should have been booked into evidence, but the decision not to book it was Sgt. Nichiporuk's, not the Appellant's. It follows that the Appellant's actions in giving the phone to Detective [redacted] and telling him to return it to Calderon was also not a violation of policy. The phone was of no immediate investigative use because it was locked and in any event the phone records could be recovered at any time via subpoena.

<u>The Appellant did not fail to timely notify his immediate supervisor of Calderon's accident.</u>

The Department alleges the Appellant took almost forty-five (45) minutes to notify Lt. [redacted] of Calderon's accident and that was excessive. But a close examination of the timeline between 1:00 a.m. and 1:43 a.m. simply does not support this allegation. It is undisputed that Lt. [redacted] received a

call from Sgt. Nichiporuk at approximately 1:00 a.m. Sgt. Nichiporuk advised Lt. [redacted] that they had recovered a county plate at the scene. Lt. [redacted] instructed Sgt. Nichiporuk to run the plate and it came back as a plate from the Sheriff's Department. Lt. [redacted] testified he looked through the station parking lot to see if the county vehicle had been returned. He then phoned the Appellant an asked him to check if the plate was registered to an OSS vehicle. The Appellant called Lt. [redacted] back and confirmed the plate was Calderon's vehicle. All of this took a matter of several minutes.

It is also undisputed that the Appellant placed several calls to Calderon and also called Detective [redacted] In the meantime Lt [redacted] briefly went to the scene of the accident and then returned to the station. Lt. [redacted] testified that he advised the Appellant to call Lt [redacted] around 1:30 a.m. The testimony of Lt. [redacted] Sgt. Nichiporuk, Detective [redacted] and the Appellant is fairly consistent and is confirmed by the phone records. During the approximate thirteen minutes between the conversation between Lt. Meyers and the Appellant at 1:30 a.m. and the notification to Lt. [redacted] at 1:43 a.m. the Appellant made several more calls to Calderon's county phone and talked to Detective [redacted] twice. Simply put, any delay in notifying Lt [redacted] was deminimus and ultimately had no impact on the investigation.

<u>The Appellant Failed to fully apprise Lt. [redacted] that he had been drinking with Calderon prior to the vehicle accident.</u>

There is no dispute that the Appellant told Lt [redacted] that he had been "out" with Calderon that evening. However, Lt. [redacted] testified that is all the

Appellant told him and the Appellant gave him no details. The Appellant adamantly insists he told [redacted] he had been drinking with Calderon that evening. This is a matter of credibility between the two and I credit Lt. [redacted] testimony over the Appellants.

First, there is no discernable reason for Lt. [redacted] to lie about this. Secondly, Lt [redacted] submitted to an I.C.I.B. interview; his responses during the interview were consistent with his testimony at hearing. Conversely, the Appellant's responses during his I.A.B. interview were equivocal and ambiguous. From Department exhibit 6, page 79 of the Appellant's I.A.B. interview:

Godwin: *Did you tell Lieutenant* [redacted] *that you had been at Chili's with Calderon and that you had been drinking?*

Lucio: *I believe I did.*

Godwin: *At that point?*

Lucio: *I think so, yes. When I came back and told him it was Calderon's car.*

Godwin: *And then was* [redacted] *there when you told Lieutenant* [redacted] *that?*

Lucio: *I believe he would have been.*

Alo: *And you say you believe you did. Why do you believe you did?*

Lucio: *Just, I, I didn't feel there was any reason for me not to tell him, tell him the truth. I mean, I just felt that, that he should know that.*

Alo: *So you did tell him?*

Lucio: *Yes, that's what I said, yeah.*

Alo: *Well you said you believe you did. So...*

Lucio: *Well...*

Alo: *Are you certain you told Lieutenant* [redacted]

Lucio: *Well, I, I, yes. I'm pretty certain that I did. The problem is that some time I learned afterwards that he said I never told him that. So when I learned that, I felt like...thinking to myself, you know, kind of doubting myself, like I, I did. I thought I did tell him. So I couldn't, I can't really like tell you the exact words that I used t tell him even, you know, exactly where we were. I, I just remember being very blunt and honest that he knew about what happened. But I don't have any independent recollection of what exactly I told him.*

Lt. [redacted] responses during his I.C.I.B. interview and at hearing were clearly more consistent and steadfast compared to the Appellant's I.A.B. interview and testimony. The Appellant disclosed he had been with Calderon at Chilis restaurant that evening and may have divulged that had both been drinking but not how much they drank, how long they had been at Chilis, or that Calderon had left the OSS trailer just prior to the hit and run accident. All this information would have been useful in the initial investigation. It would have corroborated the assumption that Calderon was involved in a DUI hit and run accident as opposed to any other scenario.

<u>The Appellant failed to apprise Lt. [redacted] that he had been drinking with Calderon upon [redacted] arrival at Pico Rivera Station.</u>

Lieutenant [redacted] testified at hearing that the Appellant never advised him that he, Calderon and [redacted] had been drinking prior to Calderon's accident. In his September 16, 2014 supplemental report, Lt. [redacted] stated only that he had been informed that Calderon went off duty between

2100 and 2200 hours. During his second I.A.B. interview Lt. [redacted] adamantly denied that the Appellant told him that he had been drinking with Calderon upon his arrival at Pico Rivera Station at approximately 2:30 a.m. Lt [redacted] was quite certain the Appellant did not disclose he had been out with Calderon until his phone conversation with the Appellant around 7:00 a.m.[4] Additionally, Lt. [redacted] was interviewed by I.C.I.B. investigators at 11:00 a.m. on September 10, 2014. At hearing Lt. [redacted] testimony was consistent with the I.C.I.B. briefing, his supplemental report and his responses during his second I.A.B. interview.

In contrast, the Appellant's September 16, 2014 supplemental report is very narrow and omits any information regarding Calderon's activities prior to the accident. During his March 21, 2018 I.A.B. interview the Appellant gave vague and equivocal responses. From pages 89/90 of the interview:

Godwin: *What do you recall about any contact between Lieutenant* [redacted] *and Lieutenant* [redacted]

Lucio: *Well, they were together.*

Alo: *Were they talking freely?*

Lucio: *Yeah.*

Alo: *And what were they talking about?*

Lucio: *I, I don't know whether, you know...I think at some point they said they had to, they had to, to notify their Captain or notify the Captain. Stuff like that. Just work related stuff, and what has been done. They checked...I think they checked hospitals, check their state--...you know, that type of stuff, like okay, we did this, we did that. You know, that type of thing.*

[4] Phone records indicate a six-minute call between Lt. [redacted] and the Appellant at 7:07 a.m.

Godwin: *Did they talk to each other about Calderon having been drinking at Chilis?*

Lucio: *I don't know if they did.*

Alo: *Was that part of the conversation about him being intoxicated and leaving the scene?*

Lucio: *No. My, my recollection of their conversation was just they were, okay, we did this. We checked the hospitals. We checked the area. We did...you know, it was more of, of things they needed to do to try to find him. Locate him somehow. What they did. What they didn't do. That type of stuff.*

Godwin: *Did lieutenant* [redacted] *and Lieutenan*[redacted] *together talk to you about your knowledge? In other words, kind of like maybe a supervisors inquiry type thing?*

Lucio: *No.*

Godwin: *Hey, what were you doing there? How much did you drink?*

Lucio: *No.*

Godwin: *Was it any specific questions?*

Lucio: *No.*

Godwin: *Did that surprise you, that they did not aske those kind of questions?*

Lucio: *No.*

Godwin: *Considering that Calderon had been involved in a crash and he had been drinking alcohol before, and they both knew that, did you think it was surprising they didn't ask you more about how much he had to drink?*

Lucio: *It didn't surprise me, no.*

Godwin: *Why didn't it? Why didn't it surprise you? Isn't that something you would have wanted to have known as a supervisor?*

Lucio: *Well, I believe I was very candid and told them what had happened. And I believe that there was actually nothing more that I could even add to it. At that point.*

Those are not the answers of a subject who is forthcoming or candid. At hearing, the Appellant testified he informed Lt. [redacted] during his initial phone call that he had been with Calderon earlier in the evening and that the two of them had been drinking. But the Appellant never specifically said that during his I.A.B. interview. In contrast, Lt. [redacted] version of events was consistent beginning with his I.C.I.B. briefing just hours after the incident thru his I.A.B. interview and his testimony at hearing. If the Appellant disclosed, either in his initial phone call with Lt. [redacted] or when [redacted] arrived at Pico Rivera Station that he had been drinking with Calderon earlier in the evening, it simply is not credible that [redacted] would not follow up with additional questions once he arrived at Pico Rivera Station.

<u>The Appellant failed to notify his immediate supervisor that Calderon called him at 4:34 a.m.</u>

The phone records indicate Detective Calderon called and talked to the Appellant at 4:34 a.m., just minutes after Detective [redacted] and Lt. [redacted] made contact with Calderon's [redacted] Calderon called the Appellant again at 4:50 a.m. Both calls were several minutes in duration. This was followed by a call between [redacted] and the Appellant at 5:01 a.m. wherein [redacted] informed the Appellant he had located Calderon. At hearing the Appellant testified he did not notify Lt. [redacted] because he was

confident Calderon would contact either [redacted] or [redacted] as he instructed. But clearly the Appellant should have immediately notified Lt. [redacted] that Calderon had contacted him. In fact, since the Appellant had both his county and personal phone, there was nothing to prevent him from keeping Calderon on the line while he attempted to contact Lt [redacted]

The Appellant did not tell Captain Rivero that he had been drinking with Calderon at Chilis prior to the accident during their 6;45 a.m. telephone call.

Similarly, the Appellant was not forthcoming in his conversation with Captain Eddie Rivero which took place at approximately 6:45 a.m. Mr. Rivero, who retired as an Assistant Chief in 2019, testified he called the Appellant to determine where Calderon had been the hours before the accident and if he had been drinking. Mr. Rivero testified that he was working on the assumption that Calderon had been involved in a DUI and wanted to "fill in the gaps" between Calderon leaving work and having the accident.

Mr. Rivero testified that he asked the Appellant what time Calderon left work and the Appellant told him about 10:00 p.m. He asked the Appellant if Calderon had been drinking and the Appellant replied "probably". He asked the Appellant to question the other OSS team members to see if they had been out with Calderon prior to the accident and the Appellant said he would. During the entire eight (8) minute conversation the Appellant never disclosed he had been with Calderon at Chilis prior to the accident, that they had been drinking, that they had returned to the OSS trailer after Chilis

closed, or that Calderon had left the OSS trailer just minutes before the collision.

The Appellant testified he was "confused" by Rivero's questions because he assumed Lt. [redacted] had told Rivero they (he and Calderon) had been out drinking. The Appellant admitted that he did not volunteer the information that he, Calderon and [redacted] had been drinking at Chilis that evening.

Candidly, the Appellants version of the conversation does not make sense. If, as he testified, he had fully disclosed to Lt. [redacted] that he had been drinking with Calderon before the accident, there was no reason not to impart that same information to Captain Rivero. Even if he believed Lt. [redacted] had withheld that information from Captain Rivero for some reason, the Appellant had an obligation and duty to be forthcoming to his second-line supervisor. Its readily apparent the Appellant failed in this regard. Mr. Rivero testified he was trying to gather as much information as possible before briefing his superior officers; it makes sense that he would ask questions calculated to gather that information.

<u>The Appellant failed to promptly correct his omission to Captain Rivero.</u>

It is undisputed that following the phone conversation with Captain Rivero, the Appellant called Lt. [redacted] Again, the versions of this conversation differ. Lt. [redacted] testified the Appellant disclosed for the first time that he had been drinking with Calderon prior to the accident. According to [redacted] the Appellant was concerned that he had not been truthful with Captain Rivero and [redacted] advised him to call Rivero back and tell him

the truth. The Appellant testified that he asked Lt. [redacted] if he had told Captain Rivero the two had been drinking and Lt. [redacted] told him it was up to him to disclose that to Captain Rivero. But the Appellant did not immediately call Captain Rivero back. Rivero testified and documented in his supplemental report that the Appellant did not call him until 9:10 a.m., well over two hours after the initial call. That delay meant Rivero gave incomplete information to senior officers he was briefing and had to correct it once he learned the truth.

The Appellant omitted key facts in his September 16, 2014 supplemental report.

The Appellant and the rest of the OSS team were directed by Captain Rivero to write supplemental reports. The Appellant wrote a supplemental report on September 16, 2014. It is surprisingly brief and omits numerous relevant facts, including the fact Calderon had been drinking prior to the DUI collision, what time Calderon left the OSS trailer and the specific instructions he gave to Detective [redacted] The Appellant also reported Calderon called him at approximately 5:30 a.m., a key fact that was off by almost an hour. In summary, it is a report designed to give the impression the Appellant was actively involved in the investigation while leaving out key facts relevant to the investigation.

The Appellant did not obstruct the investigation by telling Detective [redacted] he should not agree to an interview with ICIB investigators.

Detective [redacted] testified the Appellant approached him and tried to discourage him from participating in and I.C.I.B. interview. The Appellant flatly denied such a conversation ever occurred. I concluded that while there may have been a conversation about participating in an I.C.I.B. interview, it did not rise to the level of obstructing the investigation.

First, at the conclusion of Detective [redacted] January 15, 2015 I.C.I.B. interview he was asked the following:

Harman: *That's all I got. Since that time, is there any talk about, you know…I don't know, how to avoid our questions or how to cover their tracks or anything like that you've been…heard or…?*

[redacted] *No.*

Harman: *Been made aware of?*

[redacted] *No.*

Harman: *No, nothing like that? Any questions of us that we can answer for you?*

Moeller: *Yeah. Maybe you have a question.*

Harman: *Nothing?*

[redacted] *Nothing from me. You know, I've got nothing to hide you know.*

Detective [redacted] was interviewed by I.A.B. investigators on January 29, 2018, three years after his I.C.I.B. interview. During that interview Detective [redacted] stated that several team members, including the Appellant, asked if he was going to talk to I.C.I.B. investigators. But Detective [redacted] did not state he was intimidated or threatened by any OSS team member if he interviewed with I.C.I.B.

It is significant that Detective [redacted] never mentioned any discussion with the Appellant during the I.C.I.B. interview despite the fact the interview took place just four months after the incident itself. In fact, said conversation would have been just weeks or even days before [redacted] I.C.I.B interview. Certainly, [redacted] recollection would have been better in January 2015 than January 2018. By the time Detective [redacted] testified over five years later on July 18, 2019 he had a specific memory of the Appellant approaching him at the gas pumps and trying to discourage him from an I.C.I.B. interview. Moreover, Detective [redacted] admitted he never reported the conversation with the Appellant to any superior officer. Given the inconsistencies in Detective [redacted] testimony, there is simply not enough evidence to sustain this charge with a preponderance of the evidence.

The Appellant made untruthful statements during his March 21, 2018 I.A.B. interview.

The Appellant made several untruthful statements during his I.A.B. interview. Most relevant was his insistence that he had fully informed Lt. Meyer that he had been out with Calderon prior to the accident and that they had consumed alcohol. Also relevant were his responses concerning Lt. [redacted] and when he advised him that Calderon had been drinking at Chilis. As discussed above, the testimony of Lt. [redacted] and Lt. [redacted] were credited over the Appellant's.

In summary, the most serious of the charges brought by the Department against the Appellant were found to be true. The investigators in this case believed there was a conspiracy of sorts between the Appellant, Detective [redacted] and Lieutenant [redacted] to delay locating Calderon, perhaps to give him an opportunity to sober up before an alcohol level test was performed. Frankly, that theory is unfounded. However, while the Appellant did not engage in a conspiracy, he initially withheld pertinent information that would have assisted in the investigation. He displayed extremely poor judgment in drinking to the point of impairment with OSS team members. He was not fully honest with Lt. [redacted] and failed to disclose his involvement prior to the accident to Lt. [redacted] When confronted directly by Captain Rivero he again failed to disclose his culpability.

FINDINGS OF FACT

1. The Appellant was hired by the Department on December 27, 1994.

2. Prior to the event leading to his discharge the Appellant had no disciplinary action.

3. At the time of the incident leading to the disciplinary action the Appellant was a Sergeant with the Operation Safe Streets (OSS) team domiciled at Pico Rivera Station.

4. Appellant's reliance on *San Diego Police Officers Assn. v. City of San Diego* as the basis for the alleged Skelly violation is misplaced. There was no evidence the investigator's log was reviewed, analyzed or considered by the proposing official, the deciding official or the panel members that reviewed the case. Appellant failed to establish the investigator's log is evidence in the commonly accepted meaning of the word or that it was in any way material in considering the disciplinary action.

5. Taken together, Parra v. City and County of San Francisco Police Commission (2013) 213 Cal. App. 4th 977, Richardson v. City and County of San Francisco Police Commission (2013) 214 Cal. App. 4th 671, cites Bacilio v. City of Los Angeles (2018) 28 Cal. App. 5th 717 provide that (1) it is the conduct of the officers that is being investigated and subject to prosecution, (2) the tolling period continues so long as there is a pending investigation into that conduct

and (3) the investigation is no longer pending only when a final determination is made by the prosecuting office. The criminal investigation started on September 10, 2014, when the investigation was assigned to Lt. Harman and concluded on August 24, 2017, when the Los Angeles County District Attorney declined criminal prosecution of the Appellant.

6. The Appellant used poor judgment in joining subordinate employees at Chili's and drinking to excess. This was a violation of Manual of Policy and Procedures (MPP) Section 3-01/030.05, General Behavior.

7. The Appellant used poor judgment in allowing civilians to enter the OSS trailer for an extended period. This was a violation of MPP Section 2-01/030.10, Performance to Standards.

8. The Appellant used poor judgment in allowing Detectives Calderon and [redacted] to drive county vehicles while impaired. This was a violation of MPP Section 3-01/05.10 0.10, Performance to Standards.

9. The Appellant did not fail to book Detective Calderon's phone into evidence. Sergeant Nichoporuk, the senior Pico Rivera Officer at the accident scene, made the decision. The phone was not of any immediate investigative value as it was locked.

10. The Appellant did not fail to timely notify his immediate superior. Lt. [redacted] of Calderon's accident. Any delay was minimal and due to

other efforts the Appellant was making in trying to locate Detective Calderon.

11. The Appellant failed to fully apprise Lt. [redacted] that he had been drinking with Calderon prior to the vehicle accident. The information the Appellant gave to Lt. [redacted] was minimal and inadequate. This was a violation of MPP Section 3-01/030.10, Obedience to Laws, Regulations and Orders and Section 3-01-030.37, Unnecessary/Inappropriate Interference in an Investigation.

12. The Appellant failed to apprise Lt. [redacted] hat he had been drinking with Detective Calderon upon his initial telephone notification and/or Lt. [redacted] arrival at Pico Rivera Station. This was a violation of MPP Section 3-01/030.10, Obedience to Laws, Regulations and Orders and Section 3-01-030.37, Unnecessary/Inappropriate Interference in an Investigation.

13. The Appellant sent Detective [redacted] home when he also knew material facts that had not been disclosed to Lt. [redacted]

14. The Appellant failed to notify his immediate supervisor Lt. [redacted] that Calderon called him at 4:34 a.m. This was a violation of MPP Section 3-050.10, Performance to Standards as it demonstrates a lack of thorough understanding of emergency procedures and management of officer related incidents.

15. The Appellant failed to apprise Captain Rivero that he had been drinking with Calderon at Chilis prior to the accident during their September 10, 6;45 a.m. telephone call. This was a violation of 3.01/030.37, Unnecessary/ Inappropriate Interference in an Investigation as the Appellant provided misleading, incomplete and inaccurate information to his second-line Supervisor regarding the events of September 9 and 10, 2014 during that initial phone conversation.

16. The Appellant failed to promptly correct his omissions to Captain Rivero. This was a violation of MPP Section 3-01/050.10, Performance to Duties.

17. The Appellant omitted key facts in his September 26,2014 supplemental report. This was a violation of MPP 3-01/030.37 Unnecessary/Inappropriate Interference in an Investigation.

18. The Appellant did not obstruct the investigation by telling Detective [redacted] e should not agree to an interview with ICIB investigators.

19. The Appellant made untruthful and inaccurate statements during his March 21, 2018 IAB interview. This was a violation of MPP Section 3-01/030.10, Obedience to Laws Regulations and Orders, Section 3-01/040.69, Honesty Policy, 3-01/040.70, Dishonesty/False Statements and 3-040/70, Dishonesty/Failure to Make Statements or Making False Statements.

CONCLUSIONS OF LAW

1. The investigator's log was not evidence and was not considered or relied upon by the proposing, deciding, or reviewing officials. Therefore, there was no Skelly violation.

2. The investigation began on September 10, 2014, when assigned to I.C.I.B. investigator Lt. Harman and concluded on August 24, 2017, when the Los Angeles County District Attorney declined criminal prosecution of the Appellant in writing. There was no POBRA violation.

3. The Appellant failed to make proper notification to Lt. [redacted] regarding drinking with Detective Calderon because the information imparted was incomplete and vague. The Appellant failed to make prompt notification to Lt. [redacted] regarding drinking with Detective Calderon because he did not do so at the earliest opportunity.

4. The Appellant failed to take appropriate corrective measures when he allowed Detective [redacted] to leave the OSS trailer while still under the influence of alcohol.

5. The Appellant failed to demonstrate a thorough understanding of emergency procedures when he did not immediately notify his

immediate superior, Lt [redacted] that Detective Calderon called him at 4:34 a.m. on September 10, 2014.

6. The Appellant failed to act as a positive role model when he allowed civilians into the OSS trailer following several hours of drinking alcohol at Chilis restaurant.

7. The Appellant did not violate Department policy when he did not book Detective Calderon's personal cell phone into evidence.

8. The Appellant provided incomplete and misleading information to then Captain Rivero during their 6:45 a.m. telephone conversation on September 10, 2014.

9. Sending Detective [redacted] home when he ([redacted]) also knew material facts that had not been disclosed to Lt. Rodriguez interfered with the investigation.

10. The Appellant did not interfere with the investigation when he discussed the I.C.I.B. interview with Detective [redacted]

11. Delaying notification to Lt. Rodriguez and Captain Rivero interfered with the investigation.

12. Instructing Detective [redacted] to return Detective Calderon's personal phone to him did not interfere with the investigation.

13. The Appellant omitted material information in his September 16, 2014 Supplemental Report.

14. The Appellant was untruthful during his March 21, 2018, I.A.B. interview when he stated he told Lt. [redacted] Calderon had been drinking at Chilis restaurant prior to Calderon's hit and run accident. The Appellant only told Lt. [redacted] that they had been out together earlier in the evening.

15. The Appellant was untruthful during his March 21, 2018, I.A.B. interview regarding his telephone conversation with Captain Rivero. The Appellant denied that Captain Rivero asked him questions regarding Calderon's whereabouts and who he had been with prior to the hit and run accident.

16. The Appellant was also untruthful during his March 21, 2018, I.A.B. interview concerning the reasons for returning to the OSS trailer with the civilian women following their drinking at Chilis restaurant.

17. The Appellant's years of service and disciplinary record are mitigating factors, but do not overcome the serious nature of the charges found to be true.

18. The Discharge is appropriate.

RECOMMENDATION

It is recommended that the October 1, 2018, discharge be upheld by the Los Angeles County Civil Service Commission.

Respectfully submitted,

David P. Beauvais, Hearing Officer

DATE: June 7, 2021



OFFICE OF THE SHERIFF



COUNTY OF LOS ANGELES

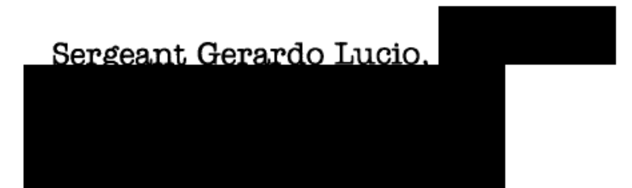
HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

October 1, 2018

Date of Department Hire 12/27/1994

Sergeant Gerardo Lucio, [redacted]



Dear Sergeant Lucio:

LETTER OF IMPOSITION

On July 2, 2018, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under IAB File Number IV2365542. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Sergeant, Item No. 2717A, with this Department, effective as of the close of business on September 28, 2018.

An investigation under IAB File Number IV2365542, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or or 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to Failure to Carry Out Supervisory, Managerial or Executive Duties and Responsibilities

Adequately and Promptly, and/or 2-02/080.00, Sergeants; and/or 3-01/050.10, Performance to Standards; on or about or between September 9 and 10, 2014; you failed to perform to the standards established for your rank of Sergeant, when you failed to ensure your subordinates adhered to established orders and policies; and/or failed to perform your duties in a manner which established and maintained the highest standard of efficiency in carrying out the functions and objectives of the Department, as evidenced by, but not limited to:

a. failing to make proper and prompt notifications to your managers relating to an incident involving your subordinate; and/or,

b. failing to take appropriate corrective measures consistent with your rank and authority; and/or,

c. failing to demonstrate a thorough understanding of emergency procedures and management of officer involved incidents; and/or,

d. failing to be a positive role model and provide leadership when you allowed non-authorized persons to enter and loiter for non-work related purposes in the Pico Rivera OSS Office after consuming alcoholic beverages.

2. That in violation of Manual of Policy and Procedures Sections 3-01/040.45, Safeguarding Money, Property, and Evidence, on or about or between September 9 and 10, 2014; you failed to maintain the highest standards of law enforcement personnel, and/or engaged in behavior which caused the Department to be brought into disrepute, and/or demonstrated a pattern of undesirable and/or unprofessional behavior, as evidenced by, but not limited to:

a. failing to properly secure and book or cause to be booked, Deputy Calderon's personal cell phone as evidence for a hit and run traffic collision investigation (Los Angeles County Sheriff's Department Report Numbers 914-06982-1514-250 and 914-00063-2003-441).

3. That in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/030.37, Unnecessary/Inappropriate Interference in an Investigation; on or about or between September 9 and 10, 2014; you knowingly interfered and/or unnecessarily interjected yourself beyond the scope of your responsibilities into a Department criminal investigation; as evidenced by, but not limited to:

a. providing misleading, incomplete and/or inaccurate, and/or false, and/or improper statements to your managers as to the events of September 9 and 10, 2014; and/or,

b. sending Deputy [redacted] home from the Pico Rivera OSS office; and/or

c. discouraging Detective [redacted] from speaking with ICIB; and/or

d. delaying notifications relating to pertinent information into the investigation involving a criminal hit and run investigation; and/or

e. instructing Det. [redacted] to return Subject Calderon's personal cellphone recovered from the scene of the collision to him.

4. That in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/005.10,

Responsibility for Documentation; on or about or between September 9 and 10, 2014, you omitted and/or failed to provide complete information, when you failed to fully and accurately record your actions in your Supplemental Report.

5. That in violation of Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations, and Orders, as it pertains to 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements During Departmental Internal Investigations, on or about March 21, 2018, you provided false, and/or misleading, and/or incomplete statements during your recorded interview and/or during your conversation with then-Captain Rivero on September 10, 2014, regarding your actions on or about or between September 9 and 10, 2014; as evidenced, but not limited to:

   a. stating you told Lieutenant [redacted] that Subject Calderon was drinking at Chili's prior to a traffic collision; and/or,

   b. stating or suggesting to then-Captain Rivero you did not know if Deputy Calderon was drinking prior to a traffic collision; and/or words to that affect; and/or,

   c. stating or suggesting to then-Captain Rivero you did not know Deputy Calderon's whereabouts prior to the collision and/or did not know who you were with; and/or

   d. denying during your recorded interview that you and your subordinates went to the OSS office for water and snacks and/or because they did not want to drink and drive after having told then-Captain Rivero that they did so during your conversation with him on September 10, 2014.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet, which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 500 W. Temple Street, Room 522, Los Angeles, California 90012.

If you have any questions, you may contact Tamora Johnson, of Internal Affairs Bureau, at [redacted]

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

KELLEY S. FRASER, CHIEF
SOUTH PATROL DIVISION

KSF:TKJ:tj
(Professional Standards and Training Division – Internal Affairs Bureau)

IAB FILE NO. IV2365542

Attachments

c: Kelley S. Fraser, Chief, South Patrol Division
John M. Roberts, Captain, Operations Safe Streets/Unit Personnel File
Kimberly L. Unland, Captain, Personnel Administration Bureau
Doreen Garcia, Administrative Services Manager III, Pay, Leaves, and Records Units
Tamora Johnson, Operations Assistant I, Internal Affairs Bureau
Vince Vasquez, Operations Assistant I, Advocacy Unit